Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 06-121
	)	MB Docket No. 02-277
2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MM Docket No. 01-235
	)	
Cross-Ownership of Broadcast Stations and Newspapers	)	MM Docket No. 01-317
	)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	MM Docket No. 00-244
Definition of Radio Markets		

COMMENTS OF ADAM THIERER, SENIOR FELLOW WITH THE PROGRESS & FREEDOM FOUNDATION ("PFF") AND THE DIRECTOR OF PFF'S CENTER FOR DIGITAL MEDIA FREEDOM

Adam D. Thierer
The Progress & Freedom Foundation
1444 Eye St., NW Suite 500
Washington, DC 20005
202-289-8928

October 23, 2006

TABLE OF CONTENTS

Page

I) INTRODUCTION: OVERCOMING MYTHOLOGY IN THE DEBATE OVER MEDIA OWNERSHIP……………………………………………… 3

II) DIVERSITY MYTHS……………………………………………………………8

III) LOCALISM MYTHS……………………………………………………………35

IV) CONCENTRATION MYTHS……………………………………………….. 47

V) CONCLUSION…………………………………………………………………………70

I) INTRODUCTION: OVERCOMING MYTHOLOGY IN THE DEBATE OVER MEDIA OWNERSHIP

My name is Adam Thierer and I serve as a senior fellow at the Progress & Freedom Foundation ("PFF") in Washington, D.C. The Progress & Freedom Foundation is a private, non-profit, non-partisan research institution established in 1993 to study the digital revolution and its implications for public policy.

I also serve as the director of PFF's Center for Digital Media Freedom, which analyzes public policy developments that impact both the economic and social aspects of the media industry. A major part of the CDMF's research agenda involves the debate over media ownership policy. Toward that end, last year I released a book entitled *Media Myths: Making Sense of the Debate over Media Ownership.* Copies of this book were previously submitted to the Federal Communications Commission ("Commission") and the book is available in its entirety online at:

www.pff.org/issues-pubs/books/050610mediamyths.pdf

Portions of the first three chapters of my book have been condensed and reproduced in this filing. Those chapters dealt mostly with diversity and localism concerns. But many other issues were addressed in the book. In fact, in the book, I sought to address the seven major myths that I believe have been driving the heated debate over media ownership reform:

- Myth #1: **Diversity** will suffer in an unregulated marketplace and many niche or minority audiences will not have access to the news, information or entertainment they desire or need.

  Reality: Today's media environment is more diverse than ever before and is characterized by information abundance, not information scarcity. Citizens enjoy more news and entertainment options than at any other point in American history or human civilization. If there is a media diversity problem today it is that citizens suffer from "information overload" because of all the choices at their disposal. The number of information and entertainment options has become so overwhelming that many citizens struggle to filter and manage all the information they can choose from on any given day.

- Myth #2: "**Localism**" will be ignored in an unregulated marketplace since media providers will only deliver local fare if they are small "mom-and-pop" organizations. Larger media providers or chain owners cannot be expected to fulfill the needs of local communities.

Reality: While we do not really know exactly how much local fare citizens demand, citizens still receive a wealth of information about developments in their communities. Although citizens are increasingly opting for more sources of national news and entertainment, local information and programming are still popular and will not disappear in a deregulated media marketplace. Indeed, "localism" is the one thing that distinguishes traditional radio and television broadcasting from newer forms of media and keeps it competitive. And new technologies are making it easier than ever before to access local information on demand.

- Myth #3: **Concentration** of media ownership has become a crisis as only a few companies control the entire media universe. Absent government controls on the growth of media firms, only a few giant conglomerates would be left to control all media.

Reality: The media marketplace is vigorously competitive and not significantly more concentrated than in past decades. Regardless, competition and concentration are not mutually exclusive. Citizens can have more choices even as the ownership of media outlets grows slightly more concentrated as it has in some sectors in recent years. Importantly, much of the consolidation we have seen in recent years has been a response to rising competition from new outlets and technologies. As this competition has segmented the market and given consumers more options, many traditional media outlets have used consolidation as one method of offsetting increased audience fragmentation.[1]

- Myth #4: The future of our **democracy** is at stake since modern media fails to provide the necessary elements and conditions for public discussion of important issues.

  Reality: Civil discourse and a healthy democracy are the products of a free and open society unconstrained by government restrictions on media structures or content. "Democracy" does not equal untrammeled majoritarianism, and it does not mean that government can simply can ordain any ownership structures or business arrangements it wishes. But by all objective historical standards, deliberative democracy has never been more vigorous than it is today.

[1] Christopher Dixon, managing director of Gabelli Group Capital Partners, has argued that consolidation was tantamount to a "circle the wagons" strategy by major media operators in response to audience declines and fragmentation. "The [ownership] consolidation offset the [audience] fragmentation," he says. Cited in Jon Ziomek, "Journalism Transparency and the Public Trust," Aspen Institute *Report of the Eighth Annual Aspen Institute Conference on Journalism and Society*, 2005, p. 17.

- Myth #5: Ownership rules are needed to preserve the **quality** of journalism and ensure informative, high-quality content and entertainment.

  Reality: Media quality is, at root, a subjective matter. Government should have no say over—or even attempt to influence the quality of—news or entertainment in America. But with so many media outlets and options available today, citizens have a wide range of options from which to choose—meaning they can decide for themselves what level of "quality" they are looking for in news and entertainment. Importantly, increasing media diversity and competition has allowed for a flowering of more "biased" or opinioned news and commentary. Far from being a negative development, this is exactly the sort of vigorous exchange of ideas that should be hoped for in a democracy.

- Myth #6: **Free speech** will be betrayed since the First Amendment was meant as a guarantee of press diversity and "freedom of access" to media outlets.

  Reality: The First Amendment was not written as a constraint on private speech or actions, but rather as a direct restraint on government actions as they relate to speech.[2] If the First Amendment is to retain its force and true purpose, structural ownership rules and "media access" mandates must not be allowed to stand.

- Myth #7: **New technologies**, including the Internet, make little difference to the outcome of this debate or cannot be used as justification for relaxing existing media ownership rules.

  Reality: New technologies and media trends *do* have an important bearing on this debate and call into question the wisdom of existing media ownership restrictions. In particular, the rise of the Internet and online media is radically changing the nature of this sector. Today's media marketplace looks very different than that of just 20 years ago and even more profound changes are likely on the way. Moreover, rapid technological convergence has made it increasingly difficult to distinguish one type of media outlet from another. Bits are bits, and they should not be artificially separated by archaic cross-ownership regulations.[3]

---

[2] "The First Amendment precludes government's dictating the content of speech; it does not dictate structural regulations." Thomas G. Krattenmaker and Lucas A. Powe, Jr., *Regulating Broadcast Programming* (Cambridge, Massachusetts: The MIT Press, 1994), p. 226.

[3] For an early and enlightening discussion on this "bits are bits" notion, see Nicholas Negroponte, *Being Digital* (New York: Knopf, 1995), pp. 56-58.

Again, while all of these issues are dealt with in my book, this filing will only touch on the diversity and localism concerns in this debate.

II) DIVERSITY MYTHS

Probably the most commonly repeated myth about media liberalization is that it will lead to the death of media diversity. Media critics argue that regulation is needed to promote diverse sources of news, opinion, culture, and entertainment because markets ultimately fail to satisfy these needs.[4]

Numerical caps on media ownership, therefore, are intended to serve as a crude regulatory proxy to supposedly help ensure a diversity of viewpoints.[5] Essentially, although they never state it in such terms, it is as if the critics of reform believe perfect media diversity can only be achieved by mandating one media outlet per owner. Implicitly, the critics are also trying to make the case that we were better off in the past than we are today. As the facts demonstrate, nothing could be further from the truth.

The Layered Media Model

---

[4] "The age of diversity is gone," proclaims Tom Rosenstiel, director of the Project for Excellence in Journalism. Quoted in Catherine Yang, "Keeping Little Choices in Big Media," *Business Week*, March 1, 2004, p. 40.

[5] "Structural limits remain the best means for promoting diversity in civic discourse," argues Mark Cooper of the Consumer Federation of America. Mark Cooper, *Media Ownership and Democracy in the Digital Information Age* (Stanford, CA: Center for Internet and Society, Stanford University Law School, 2003), p. 14, http://cyberlaw.stanford.edu/blogs/cooper/archives/mediabooke.pdf.

Today's media environment is more diverse than ever before. Citizens enjoy more news and entertainment options than at any other point in American history. To get a feel for just how much the media marketplace has changed in the past few decades, it helps to take a look at what the world looked like in a sample year, say 1970, compared to today. And to properly compare and contrast the past and the present, the media universe needs to be broken into four components or layers:

Layer 1: **Product or content options**: Who creates media? What is it that citizens are consuming?

Layer 2: **Distribution mechanisms**: Who delivers media? How is it distributed to the viewing and listening public?

Layer 3: **Receiving or display devices**: How is media received (seen and heard) by consumers?

Layer 4: **Personal storage options**: How do citizens retain media and information?

Table 1 illustrates just how radically the media marketplace has changed in the past 30 years in each of these four layers.

Table 1: The Media Universe of Yesterday and Today

Layer 1	Layer 2	Layer 3	Layer 4
The Media Environment Circa 1970			
Product or Content	Distribution Mechanism	Receiving or Display Device	Personal Storage Tools
Television Programming	Broadcast TV Stations	TV Sets	none
Radio Programming	Broadcast Radio Stations	Radios, Stereos	none
Print News & Literature	Newspaper & Magazine Delivery	Bound newsprint, Books	Books, Personal Library
Advertising	TV, Radio, Mail, Magazines	Everything	none
Movies	Cinemas, Broadcast TV	Movie Theater	none
Music	Radio, Records	Radio, Stereo	Records
Telecommunications	Phone Networks	Telephones	none
Photography	Cameras	Print film	Film / Prints
The Media Environment Today			
Product or Content	Distribution Mechanism	Receiving or Display Device	Personal Storage Tools
Television Programming	Broadcast TV, Cable, Satellite, Internet, VHS tapes, DVD discs	TV Sets, Computer Monitor, Personal Digital Devices	PVRs (i.e., TiVo), VCRs, DVDs, Computer discs and hard drives
Cable & Satellite Programming (+ Video on Demand)	Cable, Satellite, Internet, VHS tapes, DVD discs	TV Sets, Computer Monitor, Personal Digital Devices	PVRs (i.e., TiVo), VCRs, DVDs, Computer discs and hard drives
Radio Programming	Broadcast Radio, Satellite Radio (XM & Sirius), Internet	Home & Car Radios, Stereos, Personal Digital Devices (Walkman), Internet	CDs, tapes, Personal Digital Devices, computer discs and hard drives
Print News & Literature	Newspaper & Magazine Delivery, Internet, Software	Bound newsprint, Books, PCs, Internet websites, Personal Digital Devices (BlackBerrys)	Books, Personal Library, Personal Digital Devices, Computer discs and hard drives, Printers
Advertising	TV, Radio, Mail, Magazines, Cable, Satellite, Cell Phones, E-mail	almost anything	rarely stored
Movies	Cinemas, Broadcast TV, Cable, Satellite, Internet, Tapes, DVDs, Camcorders	Movie Theater, TV Set, Computer Monitor, Personal Digital Devices	VCRs, DVDs, Computer discs and hard drives
Music	Radio, CDs, Websites, Peer-to-Peer Networks	Radio, Stereo, Personal Digital Devices (MP3 players)	MP3s, CDs, Tapes, Personal Digital Devices, Computer discs and hard drives
Telecommunications	Phone Networks, Cellular Networks, Cable Networks, Internet Telephony, IM	Telephones, Cell Phones, Internet Phones, Personal Digital Devices (Palm Pilot)	Voice Mail, Personal Digital Devices
Internet Content & Services (+ E-Mail)	Phone Networks, Cable Networks, Wireless Networks, Power Lines, IM	Computer Monitor, Personal Digital Devices, Cell Phones, TV Set	Computer discs and hard drives, Personal Digital Devices
Video Games	Video Game Platforms, Computer Software, Websites	TV Set, Computer Monitor, Personal Digital Devices, Cell Phones	CDs / DVDs, Computer discs and hard drives
Photography	Digital Cameras, Cell Phones, Camcorders, Websites	Print film, Computer Monitor, TV set, Personal Digital Devices, Cell Phones	Prints, CDs / DVDs, Memory cards, Computer discs and hard drives, Printers

NOTE: "*Personal Digital Devices*" *refers to a broad category of handheld devices such as pagers, Palm Pilots, BlackBerrys, MP3 players, cassette and CD players, DVD players, and hybrid cell phone devices*

Consider two average families, one living in 1970 and the other in 2006, and their available media and entertainment product options (Layer 1). While impossible to quantify precisely, the sheer volume of content options offered has increased dramatically. Within the home, a typical 1970 family would have had television (probably one, or maybe two sets), radio (a few in the home and probably one in their car), newsprint (papers, magazines, books), music (via vinyl records or radio broadcasts), and basic telecom service (almost certainly through Ma Bell). A typical night could have been spent watching one of the three major network television stations, a Public Broadcasting Service (PBS) station or a UHF channel or two in their community. Or perhaps they would have listened to a few local radio stations or records on their phonograph. They could have gone out to the movies too, or gathered around the phone to make a long-distance phone call to grandma, which would have cost roughly $1.35 for a three-minute coast-to-coast call).[6]

This pales in comparison to the media products and content the average family of 2006 has at their disposal. Today, we still have access to all the same content the 1970 family did, but now we also have a 500-plus channel universe of cable and satellite-delivered programming options, video games, computer software, and the cornucopia of services that the Internet

[6] Christina Wise, "The Good Ol' Days Are Now," *Investor's Business Daily*, April 19, 2004, p. A22.

and online networks offer. And while we could all still drive down to the local cinema to catch a movie, there's less reason to do so since we can rent movies at local video stores, purchase personal copies on VHS or DVD, or order them instantaneously via cable, satellite, or the Net using video on demand (VOD) services. Finally, that cross-country call to grandma can now be made any time of the day at a low, flat rate and can be made by any member of the family using an old landline phone, one of their cell phones, or even via the Internet through voice over Internet protocol (VoIP) systems. Or we could e-mail her photos and movies of the grandkids.

But the most radical part of this media metamorphosis lies in what has unfolded in Layer 2 (Distribution Mechanisms) and Layer 3 (Receiving or Display Devices) of this chart. The number of distribution paths or delivery mechanisms to the home has expanded greatly. Likewise, the number and nature of receiving and display devices used by consumers have changed dramatically. In 1970, citizens received media in their homes via broadcast TV and radio signals delivered to their TV and radio sets; phone calls were connected over the analog phone lines controlled by AT&T; and newspapers and magazines were delivered by hand. That was about all that was delivered directly to them. They had to go to a store or library if they wanted books or records, or drive to the cinema to watch a new movie.

By contrast, today's media delivery and receiving methods would have been unimaginable to the 1970s family. Imagine being transported back in time and attempting to explain to the average family of 1970 that within 30 years the following developments would take place:

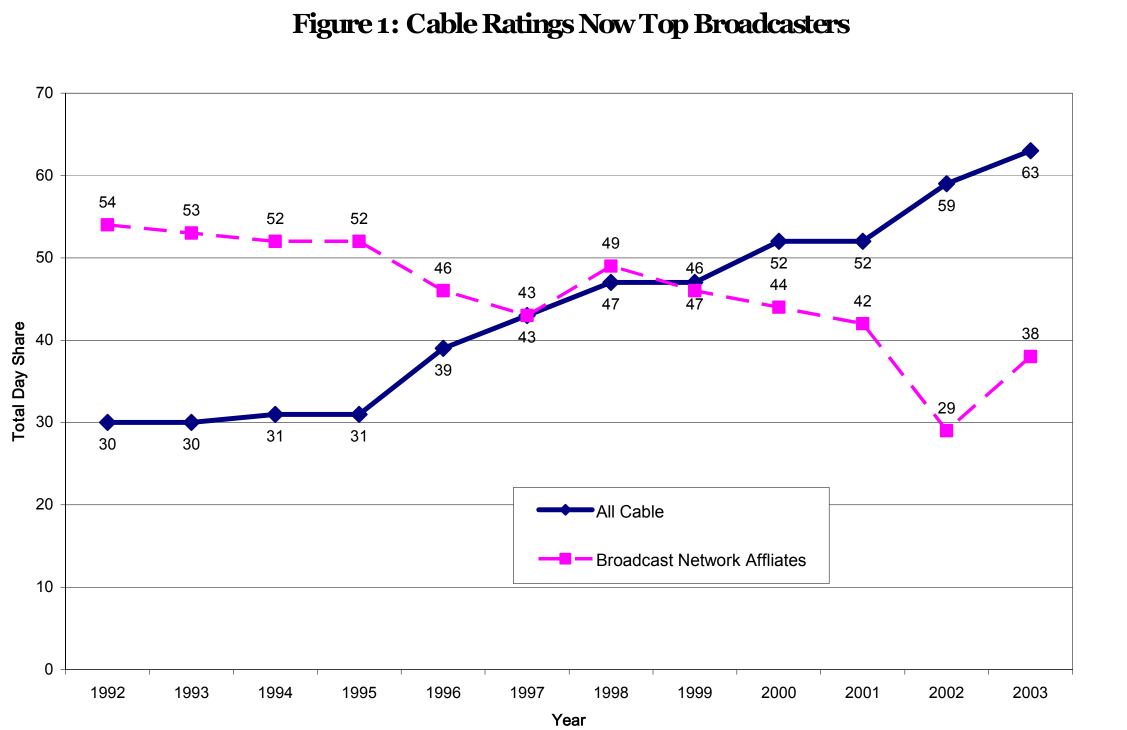
- The "Big Three" TV networks would have less prime-time market share than cable[7] (see Figure 1) and cable and satellite providers would serve almost 90 percent of all homes with hundreds of television channels of news, sports, music, movies, and other types of highly specialized information and entertainment.[8] By contrast, most households had six or fewer local television stations to choose from 25 years ago, three of which were affiliated with a major broadcast network. But thanks to the rise of cable and satellite competition the average home now receives seven broadcast television networks and an average of 102 channels.[9]

---

[7] National Cable and Telecommunications Association, www.ncta,com. Also see Gary Levin, "Cable Wins Summer's Ratings War," *USA Today*, September 2, 2003, p. 1D; Gary Levin, "'Housewives' Slows TV Migration to Cable," *USA Today*, December 27, 2004, p. 1D; Anne Becker, "Cable Wins Big in 2004," *Broadcasting & Cable*, January 3, 2005, p. 14.

[8] A recent FCC report on program diversity on broadcast television noted the new pressure put on traditional broadcasters by its new competitors. "The networks may feel less of a need to diverge from one another, but rather, want to diverge from cable. For example, one reason variety/music programming disappeared from the schedule in the 1990s is because these programs were available on a 24-hour basis on individual cable networks like Comedy Central and MTV." Mara Einstein, "Program Diversity and the Program Selection Process on Broadcast Network Television," Federal Communications Commission, *Media Ownership Working Group Study* no. 5, September 2002, p. 22, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-226838A10.pdf.

[9] Federal Communications Commission, *In the Matter of 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, FCC 03-127, June 2, 2003, p. 15, http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-03-127A1.pdf, cited hereafter as FCC, *Media Ownership Proceeding*. "Non-broadcast television programming continue to proliferate. Today, there are more than 308 satellite-delivered national non-broadcast



Source: National Cable and Telecommunications Association; Cablevision Advertising Bureau analysis of Nielsen data.

- Movies (including some first-run movies) would be delivered directly to the home or could at least be rented from a local store for a few dollars and played on the video cassette recorders that would be in almost 90

television networks available for carriage over cable, DBS and other multichannel video program distribution ("MVPD") systems. In 2002, the Commission also identified at least 86 regional non-broadcast networks, including 31 sports channels, and 32 regional and local news networks. We are moving to a system served by literally hundreds of networks serving all conceivable interests. Programming in particular abundance are sports, entertainment, and informational in nature. The four largest broadcast networks own both broadcast and cable channels. Their share of viewership is far greater than their share of the channels received by the typical American household. Of the 102 channels received by the average viewing home, the four largest broadcast networks have an ownership interest in approximately 25% of those channels." Ibid., pp. 48-49.

percent of households by 2002.[10] And entire collections of movies could be owned by consumers for as little as $15 to $20 per title.[11]

- Children's games would soon be electronically rendered into something known as a "video game." Although a nonexistent media sector in 1970, the video gaming phenomenon would grow to be a $10 billion industry and become so popular that it would be growing three times faster than the motion picture industry by the late 1990s.[12]

It would be difficult for the family of 1970 to fathom these new media delivery and display concepts. Likewise, they would likely not believe it when you next told them that almost all these new types of media that were delivered to the family of the future would be capable of being stored by consumers and reused at their leisure. As illustrated in Layer 4 of Table 1, few personal media storage tools existed for citizens in 1970. By comparison,

---

[10] *U.S. Entertainment Industry: 2002 MPA Market Statistics*, Motion Picture Association, 2002, p. 29, http://www.mpaa.org/useconomicreview/2002/2002_Economic_Review.pdf.
[11] *Ibid.*, p. 35.
[12] "A striking measure of the impact of the computer and video game software publishing industry on the U.S. economy was its 15 percent annual growth in sales between 1997 and 2000. In contrast, over the same period the U.S. economy grew only 6 percent per year and sales in the motion picture production, distribution, and allied services industry grew 4.6 percent per year." Robert Damuth, *Economic Impacts of the Demand for Playing Interactive Entertainment Software*, Entertainment Software Association, 2001, p. 5, http://www.theesa.com/pressroom.html. And it wouldn't just be about kid's games. Of the 50 percent of Americans who play video games today, 39 percent are women and the average age of a computer or video game player is 29 years old. Meanwhile, interactive, online video game networks are beginning to develop that allow these games to be played simultaneously by multiple participants across the nation. See: *Essential Facts About the Computer and Video Game Industry, 2004,* Entertainment Software Association, Media Center, http://www.theesa.com/pressroom.html.

today's media universe offers a diverse array of storage devices that allow media to be consumed at the time and place of a citizen's choosing. There's no longer any need to be home at exactly 8:00 p.m. to catch your favorite television show; to lug around your entire album collection with you if you want to listen to your favorite music wherever you go; to go to the cinema five times to watch your favorite movie; to be sitting next to the hard-wire phone in your home to catch a call from Grandma. All of these things, and much more, can be accomplished today in many different ways at many different times thanks to the explosion of the personal media storage market.

What's most important about all the technologies and developments outlined above is not just the sheer volume of new media available to average citizens but what it has enabled them to do. Many media critics are fond of repeating the famous quip of A.J. Liebling that "Freedom of the press is guaranteed only to those who own one,"[13] which of course was never really true since journalists and even average citizens were protected by the First Amendment without owning a media outlet.

But even if one assumed there was some truth to this contention, the beauty of modern media technologies such as the Internet and Web blogs is that they give every man, woman, and child the ability to be a one-person publishing house or broadcasterer and to communicate with the entire

[13] A.J. Liebling, "Do You Belong in Journalism?" *The New Yorker*, May 14, 1960, p. 109.

planet, or even break news of their own. In this new "individualized, on-demand media world," *Wonkette* blogger Ana Marie Cox argues that, "There will be more voices and more places to hear them. Our options will grow—and have grown—beyond changing the channel: Now we can start one."[14] As Michael Lewis, author of *Next* and *The New New Thing*, quips: "Technology [has] put afterburners on the egalitarian notion that anyone-can-do-anything."[15] Consider, for example, the impact of online journalist Matt Drudge's "Drudge Report" and its role in leaking the Clinton-Lewinsky scandal, eventually leading an impeachment proceeding of President Bill Clinton. "Podcasting" is the latest rage in this regard. Using little more than an iPod and a computer, anyone can record and broadcast their own radio show to the rest of the world.[16]

Moreover, new media technologies have literally put encyclopedias worth of information at our fingertips. While a 1970 family could have spent many hundreds of dollars purchasing a multivolume encyclopedia set or gone to a library to view them or other collections, there is simply no need to do this today. Instead, the library comes to us today as the Net, websites, computer software, and other electronic media place a world of information and data at our immediate disposal. And while the family of 1970 could read

---

[14] Ana Marie Cox, "Howard Stern and the Satellite Wars," *Wired*, March 2005, p. 135.
[15] Michael Lewis, *Next: The Future Just Happened* (New York: W.W. Norton, 2001), p. 103.
[16] See Marco R. della Cava, "Podcasting: It's All Over the Dial," *USA Today*, February 8, 2005, p.1D; Annalee Newitz, "Adam Curry Wants to Make You an iPod Radio Star," *Wired*, March 2005, pp. 111-113; John Markoff, "For a Start-Up, Visions of Profit in Podcasting," *The New York Times*, February 25, 2005, p. C1.

the local newspaper together, today's families can view thousands of newspapers from communities across the planet.

Even taking the Internet out of the equation, the volume of media choices has expanded in every other way for citizens. Instead of just the local newspaper, they now can get several national newspapers too and micro-papers or community weeklies. And there are more radio stations than ever before (over 13,000 today versus under 7,000 in 1970), and more musical formats too.[17] There are also more over-the-air broadcast television networks than in 1970 (Fox, WB, UPN, etc.), and cable or satellite is available too. The following charts tell the story of just how much the media marketplace has evolved over the past few decades.

Table 2: Media Trends of Yesterday and Today

Circa 1970	Today
Extremely high barriers to entry	Much lower entry barriers thanks to explosion of new technologies and media outlets
High distribution costs	Lower costs of distribution

[17] See Victor B. Miller, Christopher H. Ensley, and Tracy B. Young, "Format Diversity: More from Less?" Bear Stearns, *Equity Research*, November 4, 2002; "Has Format Diversity Continued to Increase?" BIA Financial Network, June 5, 2002.

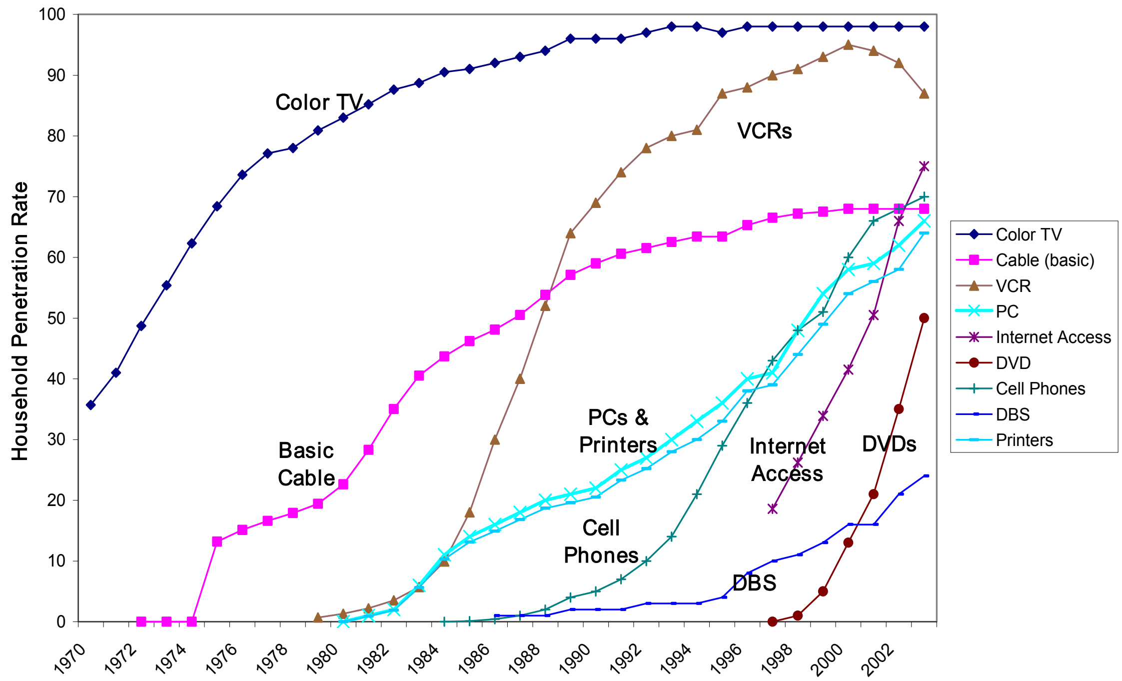
Primary business strategy = one-to-many; *broad*casting; focus on appeasing mass audiences; less media specialization	Primary business strategy = one-to-one; *narrow*casting; focus on appeasing niche or splintered audiences; hyper-specialization of media
Distinct media sectors with own sphere of influence	Greater competition / substitution among media sources and outlets
Limited media outlets; limited overall choices	Explosion of both sheer number of media outlets and overall range of choices
People complained about "information scarcity"	People complain of "information overload"
"Big 3" TV networks dominated television and controlled 90 percent of the audience	Seven broadcast TV networks and a 500-channel universe of cable and satellite choices now exist
Three nightly national newscasts shown once per evening	Dozens of national newscasts shown on a 24-7 basis, including foreign languages
We had to go to the library to retrieve hard-to-find information	The library comes to us via the Internet and online services
Limited number of electronic communications or information devices in the home (phone, TV, radio)	In addition to many phones, TVs, and radios, each home today usually has at least a few of the following: CDs, DVDs, VCRs, computers, Internet access, interactive software, cell phones and other mobile communications devices, etc.

Table 3: The Relentless March of Technology

	1970	1980	1990	2002-4
Percentage of households with **TVs**	95.3%	97.9%	98.2%	98.2%
Total number of broadcast **Television Stations**	875	NA	1,470	1,747
Average number of **TV sets** per household	1.4	1.7	2.1	2.4
Average daily time spent viewing TV (hours: minutes)	5:56	6:36	6:53	7:44
Percentage of households with **Radios**	98.6%	99%	99%	99%
Total number of broadcast **Radio Stations**	6,751	NA	10,819	13,476
Percentage of households with **VCRs**	0	1.1%	63%	87%
Percentage of households with **DVD players**	0	0	0	50%
Percentage of households with **Cell Phones**	0	0	5%	70%
Total number of cell phones subscribers	0	NA	5.2 mil.	175 mil.
Cell phone average monthly bill	NA	NA	$80.90	$49.91
Percentage of homes subscribing to **Cable Television**	6.7%	19.9%	56.4%	68%
Percentage of total households to which cable television is available	NA	42%	93%	95%
Estimated TV **market share of** **"Big 3"** (ABC, CBS, NBC)	55%	49%	31%	21%
Estimated TV **market share of** **Basic Cable**	1%	3%	20%	35%
Percentage of homes subscribing to **Direct Broadcast Satellite (DBS)** TV	0	0	1%	24%
Percentage of homes with a **Personal Computer**	0	0	22%	66%
Percentage of homes with **Internet Access**	0	0	0	74.9%

Sources: Consumer Electronics Association, *eBrain Market Research;* Cellular Telecommunications and Internet Association; *Statistical Abstract of the United States,* 2003; Federal Communications Commission; Nielsen Media Research.

Figure 2: "S Curves" for Various Technologies



Sources: U.S. Department of Commerce, Census Bureau, Electronic Industries Association, National Cable and Telecommunications Association, Nielsen/NetRatings.

What About Minority / Independent Viewpoints?

When faced with the undeniable evidence of increased choice in modern media, critics often shift gears and argue that while there may be more media choices, there are fewer outlets or opportunities for niche or minority audiences to find the information or entertainment they desire or need. “The failure of commercial mass media to meet the needs of citizens is nowhere more evident than in minority communities,” argues Mark Cooper of the Consumer Federation of America.[18] “[Minorities] don’t believe the white-

[18] Cooper, p. 52.

bread media gives them a fair chance."[19] And Cheryl Leanza and Harold Feld of the Media Access Project believe that "relying on market forces will leave underserved those markets that advertisers see as less desirable from a demographic standpoint. Society should not have to tolerate a media market where programming is aimed almost exclusively at 18- to 35- year old white males."[20] And Jeff Chester and Gary Larson of the Center for Digital Democracy make the following statement without apparently recognizing its self-contradiction: "There may be more media outlets than ever before, given the enormous range of niche publications, special-interest websites and self-produced recordings, but the mass media—more massive today than ever—scarcely admit independent or alternative voices."[21]

Even a casual review of the facts demonstrates just how off the mark these arguments about minorities or niche groups being underserved are. Compared to the past, there is clearly more niche programming than ever before and more outlets for "minorities"—however defined—to be heard. As Table 4 illustrates, cable and satellite television is home to an increasingly splintered smorgasbord of demographically diverse fare. There now exist

[19] Quoted in Terry Lane and Michael Feazel, "Media Ownership Issue Could Have Long Legacy," *Communications Daily,* August 8, 2003, p. 3.

[20] Cheryl Leanza and Harold Feld, "More Than 'a Toaster with Pictures': Defending Media Ownership Limits," *Communications Lawyer*, Fall 2003, pp. 12-22, 19 http://www.mediaaccess.org/ToasterFINAL.pdf.

[21] Jeffrey Chester and Gary O. Larson, "A 12-Step Program for Media Democracy," *The Nation*, July 23, 2002, http://www.thenation.com/doc.mhtml?i=20020805&s=larson20020723.

multiple channels dedicated to the interests of women, children, African-Americans, religious groups, children, and so on.

Table 4: The Expanding Video Programming Marketplace on Cable and Satellite TV

News: *CNN, Fox News, MSNBC, C-Span, C-Span 2, C-Span 3, BBC America*
Sports: *ESPN, ESPN News, ESPN Classics, Fox Sports, TNT, NBA TV, NFL Network, Golf Channel, Tennis Channel, Speed Channel, Outdoor Life Network, Fuel*
Weather: *The Weather Channel, Weatherscan*
Home Renovation: *Home & Garden Television, The Learning Channel, DIY*
Educational: *The History Channel, The Biography Channel (A&E), The Learning Channel, Discovery Channel, National Geographic Channel, Animal Planet*
Travel: *The Travel Channel, National Geographic Channel*
Financial: *CNNfn, CNBC, Bloomberg Television*
Shopping: *The Shopping Channel, Home Shopping Network, QVC*
Female-oriented: *WE, Oxygen, Lifetime Television, Lifetime Real Women, Showtime Women*
Male-oriented: *Spike TV*
Family / Children-oriented: *Nickelodeon, Disney Channel, Cartoon Network, WAM (movie channel for 8-16-year-olds), Noggin (2-5 years)/The N Channel (9-14 years), PBS Kids, Hallmark Channel, Hallmark Movie Channel, Discovery Kids, Animal Planet, ABC Family, Boomerang, Familyland Television Network, HBO Family, Showtime Family Zone, Starz! Family, Toon Disney*
African-American: *BET, Black Starz! Black Family Channel*
Foreign / Foreign Language: *Telemundo (Spanish), Univision (Spanish), Deutsche Welle (German), BBC America (British), AIT: African Independent Television, TV Asia, ZEE-TV Asia (South Asia) ART: Arab Radio and Television, CCTV-4: China Central Television, The Filipino Channel (Philippines), Saigon Broadcasting Network (Vietnam), Channel One Russian Worldwide Network, The International Channel, HBO Latino, History Channel en Espanol*
Religious: *Trinity Broadcasting Network, The Church Channel (TBN), World Harvest Television, Eternal Word Television Network (EWTN), National Jewish Television, Worship Network*
Music: *MTV, MTV 2, MTV Jams, MTV Hits, VH1, VH1 Classic, VH1 Megahits, VH1 Soul, VH1 Country, Fuse, Country Music Television, Great American Country, Gospel Music Television Network*
Movies: *HBO, Showtime, Cinemax, Starz, Encore, The Movie Channel, Turner Classic Movies, AMC, IFC, Flix, Sundance, Bravo (Action, Westerns, Mystery, Love Stories, etc.)*
Other or General Interest Programming: *TBS, USA Network, TNT, FX, SciFi Channel*

Table 5: New Magazine Launches by Interest Category, 2003

Crafts / Games / Hobbies / Models (45)	Computers (10)	Teen (6)
Metro / Regional / State (45)	Women's (10)	TV / Radio / Communications / Electronics (6)
Sports (33)	Men's (10)	Art / Antiques (5)
Automotive (29)	Children's (8)	Business / Finance (5)
Special Interest (23)	Comics / Comic Technique (8)	Motorcycles (5)
Health (19)	Entertainment / Performing Arts (7)	Bridal (3)
Home Service / Home (17)	Literary Reviews / Writing (7)	Aviation (2)
Music (15)	Photography (7)	Gaming (2)
Sex (13)	Pop Culture (7)	Gardening (2)
Ethnic (11)	Religious / Denominational (7)	Military / Naval (2)
Epicurean (11)	Dogs / Pets (6)	Science / Technology (2)
Fashion / Beauty / Grooming	Dressmaking / Needlework	Media Personalities (1)

(11)	(6)	
Fitness (11)	Fishing / Hunting (6)	Mystery / Science Fiction (1)
Travel (11)	Political / Social Topics (6)	
		TOTAL: 440

Meanwhile, as a trip to most modern bookstores reveals, almost every hobby or interest under the sun has its own magazine, journal or newsletter these days. According to the Magazine Publishers of America (MPA), there were 17,254 magazines produced in 2003, up from 14,302 in 1993.[22] And new titles are launched every week. As Table 7 illustrates, there were 440 new magazine launches in 2003, up from 289 new launches in 2002, according to the MPA.[23] From 1985 to 2000, an average of 690 new titles were released annually according to Albert Greco of Fordham University.[24] Similarly, there has been a proliferation in radio formats in recent decades with a genre to fulfill almost any taste or interest.

And then there's the Internet, with a website or newsgroup for almost any topic or interest imaginable. Again, consider the meteoric rise of personal blogs, which are online journals devoted to providing commentary on a wide variety of political and cultural issues. The "blogosphere" is opening up

---

[22] As the MPA's annual *Magazine Handbook* notes, "For virtually every human interest, there is a magazine." *The Magazine Handbook 2004-5*, p. 5.
[23] Ibid., p. 7. Magazine industry expert Samir Husni actually puts the number much higher at 949 new launches last year. See Samir Husni, *Samir Husni's Guide to New Magazines 2004*.
[24] Albert N. Greco, "The Economics of Books and Magazines," in Alexander, et. al., p. 137.

amazing opportunities to countless speakers and is revolutionizing journalism and public activism in important ways.[25]

This development is confirmed by Joe Trippi, the campaign manager for Democratic presidential candidate Howard Dean, who effectively tapped the power of the Internet and blogs and gave an outsider a respectable chance of capturing the nomination. He credits much of Dean's success to the campaign's e-mail and blogging efforts but also notes that Dean and his campaign were the subject of countless other blogs.[26] Trippi argues that blogging is now transforming the way traditional media outlets and reporters do their job each day. "The little-known secret in newsrooms across the United States is that *right now* reporters are beginning every day by reading the blogs. They're looking for the pulse of the people, for political fallout, for stories they might have missed."[27] Democratic presidential candidate John Kerry must have learned this lesson from Dean's campaign, since he linked to over 50 independent blogs on his official website during the campaign.[28]

---

[25] Jena McGregor, "It's a Blog World After All," *Fast Company*, April 2004, pp. 84-86. Commenting on the impact of political blogs, *Wall Street Journal* technology columnist Lee Gomes has argued that "These blogs are becoming an alternative-news universe, giving everyone with a PC and a Web connection access to the sorts of gossips that was once available only to reporters on the press bus." Lee Gomes, "Blogs Have Become Part of Media Machine That Shapes Politics," *The Wall Street Journal*, February 23, 2004, p. B1.

[26] Joe Trippi, *The Revolution Will Not Be Televised: Democracy, The Internet and the Overthrow of Everything* (New York: Regan Books, 2004), p. 147.

[27] Ibid., p. 229 (emphasis in original).

[28] This led New York University journalism professor Adam L. Penenberg to conclude, "[B]logs have indeed arrived as a force to be reckoned with." Adam L. Penenberg, "John Kerry and the Lost Kos," *Wired News*, July 7, 2004, http://www.wired.com/news/culture/0,1284,64113,00.html?tw=wn_tophead_3.

Thus, to say that the modern media environment is tailored exclusively to young white males as Leanza and Feld suggest, or that independent or alternative voices aren't able to be heard as Chester and Larson argue, simply doesn't mesh with reality. Their assertion might have had some validity in the media marketplace of the past, but not today. There is more diversity in media than ever before, and niche and minority audiences have more of a voice in media today than at any other time in the past.

The only possible counterargument is that all these new choices really aren't choices at all but rather just the same stuff recycled over and over again, or that all these new media outlets are being controlled by the same corporate masters, and therefore they do not offer citizens truly legitimate alternative choices. *New Yorker* media columnist Ken Auletta has echoed this sentiment when he argued that "You can literally say you actually have more voices, but they are the same voices increasingly."[29]

The idea that all these new choices are just the same recycled information is silly, of course. Each new media outlet or format must provide at least something slightly different from its rivals or it wouldn't be able to

[29] Quoted on *News Hour with Jim Lehrer*, April 2001, http://www.pbs.org/newshour/media/conglomeration/auletta.html. And leftist author Noam Chomsky claims, "The media are a corporate monopoly. They have the same point of view." Chomsky, p. 29.

stay in business for very long. If every book, magazine, TV channel, radio program, and Internet site really said largely the same thing, citizens wouldn't bother consuming any more than one or two of them and we would not have nearly as many options or outlets as we do today. When critics make arguments about all media outputs being identical, it is based more on their own views regarding the way the media world should look or operate, not on what consumers actually believe or desire.

Moreover, this sort of conspiratorial "it's all being programmed from above" sort of thinking is what former FCC Commissioner Kathleen Abernathy was referring to when she criticized "fear and speculation about hypothetical media monopolies intent on exercising some type of Vulcan mind control over the American people."[30] Nonetheless, variations of this "puppet-master" theory of media manipulation come up repeatedly in the work of media critics without any supporting evidence.

In summary, the preceding review of media diversity has illustrated that the FCC was not stretching the truth when it argued in 2003 that: "Today's media marketplace is characterized by abundance. The public is better informed, better connected, and better entertained than they were just

[30] Statement of Commissioner Kathleen Abernathy, pp. 1-2.

a decade ago.... In short, the number of outlets for national and local news, information, and entertainment is large and growing.[31]

Is the Problem Information Scarcity or Overload?

There is no denying that compared to the media universe of just 20 to 30 years ago, today's world is characterized by information abundance, not information scarcity. Indeed, not only do we now live in a world of information abundance, but some psychologists and social scientists fear that citizens now suffer from "information overload" because of all the choices at their disposal. The number of information and entertainment options has become so overwhelming that many citizens struggle to filter and manage all of the information they can choose from on an average day.[32] "A weekday edition of the *New York Times* contains more information than the average person was likely to come across in a lifetime in seventeenth-century England," estimates Richard Saul Wurman, author of *Information Anxiety*.[33]

---

[31] FCC, *Media Ownership Proceeding*, p. 29.

[32] Bryan Keefer, a 24-year old author of *All the President's Spin: George W. Bush, the Media, and the Truth*, notes that his generation has been "raised in [a] media-saturated environment, where 24-hour cable news and Internet access bring us more information than we can possibly digest." Bryan Keefer, "You Call That News? I Don't," *The Washington Post*, September 12, 2004, p. B2.

[33] Richard Saul Wurman, *Information Anxiety* (New York: Doubleday, 1989), p. 32. Francis Heylighen of the Free University of Brussels puts this media abundance / overload into a historical context: "During most of history, information was a scarce resource that was of the greatest value to the small elite that had access to it. Enormous effort would be spent in copying and transferring the little data available, with armies of monks toiling years in the copying by hand of the few available books, and armies of couriers relaying messages from one part of the kingdom to another. Nowadays, it rather seems that we get much more information than we desire, as we are inundated by an ever growing amount of email messages, internal reports, faxes, phone calls, newspapers, magazine articles, webpages, TV broadcasts, and radio programs." Francis Heylighen, "Complexity and Information

In fact, the investment bank Veronis Suhler Stevenson predicts that by 2007 the average American will spend 3,874 hours per year using major consumer media. This represents an increase of 792 hours per year, or 21 percent, from the 3,082 hours per year that the average person spent using consumer media in 1977, according to that firm.[34]

As long ago as 1971, the Nobel Prize winning economist and psychologist Herbert A. Simon foresaw the rise of this phenomenon when he noted: "What information consumes is rather obvious: it consumes the attention of its recipients. Hence a wealth of information creates a poverty of attention, and a need to allocate that attention efficiently among the overabundance of information sources that might consume it."[35] There exists a growing body of literature and academic studies dealing with this "poverty of attention" problem, although it goes by many different names today: "information overload;"[36] "cognitive overload;"[37] "information anxiety;"[38]

Overload in Society: Why Increasing Efficiency Leads to Decreasing Control," *draft paper*, April 12, 2002, pp. 12-13, http://pespmc1.vub.ac.be/Papers/Info-Overload.pdf. Similarly, Richard Saul Wurman argues that, "Access to information was once highly controlled. You had to have enough money to afford a book and an education, as well as time enough to read. Now anyone can acquire information." Wurman, p. 13.

34 Joe Mandese, "Study: Media Overload on the Rise," *Television Week*, May 17, 2004, http://www.tvweek.com/planning/051704study.html.

35 Herbert Simon "Designing Organizations for an Information-Rich World," in Martin Greenberger, ed., *Computers, Communications and the Public Interest* (Baltimore: Johns Hopkins Press, 1971) pp. 40-41.

36 Marsha White and Steve M. Dorman, "Confronting Information Overload," *Journal of School Health,* April 2000, p. 160; Hal Berghel, "Cyberspace 2000: Dealing with Information Overload," *Communications of the ACM*, vol. 40, no. 2, February 1997, pp. 19-24; Francis Heylighen, "Complexity and Information Overload in Society: Why Increasing Efficiency Leads to Decreasing Control," *draft paper*, April 12, 2002, http://pespmc1.vub.ac.be/Papers/Info-Overload.pdf; Paul Krill, "Overcoming Information

"information fatigue syndrome;"[39] "information paralysis;"[40] "techno-stress;"[41] "information pollution;"[42] "data smog;"[43] or even "data asphyxiation."[44] The title of one important early study on this issue asked the question if humans were now "dying for information." The report concluded that, "People can no longer develop effective personal strategies for managing information. Faced with an onslaught of information and information channels, they have become unable to develop simple routines for managing information."[45]

Overload," *InfoWorld*, January 7, 2000, http://archive.infoworld.com/articles/ca/xml/00/01/10/000110caoverload.xml.

[37] David Kirsh "A Few Thoughts on Cognitive Overload," *Intellectica*, 2000, http://icl-server.ucsd.edu/~kirsh/Articles/Overload/published.html.

[38] Richard Saul Wurman, *Information Anxiety 2* (Indianapolis, IN: Que, 2001), p. 1.

[39] This term is commonly attributed to psychologist David Lewis. See Kathy Nellis, "Experts: Information Onslaught Bad for Your Health," *CNN Interactive*, April 15, 1997, http://www.cnn.com/TECH/9704/15/info.overload/; Nick Hudson, "Managers Suffering from Info Overload," *Press Association Newsfile*, October 14, 1996.

[40] Dr. Neville Meyers quoted in Sherrill Nixon, "Too Much Information, Too Little Time to Digest It," *The Sunday Morning Herald,* June 30, 2003, http://www.smh.com.au/articles/2003/06/29/1056825278039.html.

[41] Larry Rosen and Michelle Weil, *TechnoStress: Coping With Technology @Work @Home @ Play* (New York: John Wiley & Sons, 1997), http://www.technostress.com/

[42] A recent *Washington Post* article reported that computer scientist David M. Levy of the University of Washington's Information School has grown so concerned about "information-polluted people" that he helped organize a conference entitled "Information, Silence and Sanctuary," to help diagnose and prescribe treatment for those suffering from this supposed problem. Noted in "Unplugging the Addiction To Information Overload," *The Washington Post*, May 10, 2004, http://www.washingtonpost.com/wp-dyn/articles/A13029-2004May9.html.

[43] David Shenk, *Data Smog: Surviving the Information Glut* (San Francisco: Harper, 1997).

[44] William Van Winkle, "Information Overload: Fighting Data Asphyxiation is Difficult But Possible," *Computer Bits*, Vol. 8, No. 2, February 1998, http://www.computerbits.com/archive/1998/0200/infoload.html.

[45] Paul Waddington, *Dying for Information? An Investigation into the Effects of Information Overload in the UK and Worldwide* (London: Reuters Business Information Report, 1996), http://www.cni.org/regconfs/1997/ukoln-content/repor~13.html.

That is no doubt an overstatement, but people do struggle to sort through all of the media choices available to them today.[46] Some critics go further and argue that the fracturing of media will also have a profound sociological impact on our society by destroying the opportunity to have the same number of "shared experiences" we might have had in the past.[47] For example, in his book *Republic.com*, University of Chicago law professor Cass Sunstein argues that the rise of the Internet may be destroying opportunities for the public to personally mingle as much as they did in the past, or have shared social experiences through other forms of media.[48] Sunstein's concerns were echoed recently by Bill Carrick, a media adviser for former Democratic presidential candidate Richard Gephardt (D-Mo.) Commenting on how the rise of the Internet, cable, and other newer forms of media have impacted the political campaign process, Carrick complained that, "The danger for democracy is that we're losing the universal campfire," in which all voters see and hear common ads and messages from candidates over common media sources.[49] Carrick was quoted in a front page *Washington Post* story in June

[46] For example, commenting on the impact of TiVos and personal video recorders have had on our lives, Barry Schwartz, author of *The Paradox of Choice*, has argued that "the TV experience is now the very essence of choice without boundaries. In a decade or so, when these boxes are in everybody's home, it's a good bet that when folks gather around the watercooler to discuss the last night's big TV events, no two of them will have watched the same shows." Barry Schwartz, *The Paradox of Choice: Why More is Less* (New York: Ecco, 2004), p. 18.

[47] See, for example, Todd Gitlin, *Media Unlimited: How the Torment of Images and Sounds Overwhelms Our Lives* (New York: Henry Holt and Company, 2002). Others lament the impact all this will have on high-quality news coverage. See Jack Rosenthal, "What to Do When News Grows Old before Its Time," *The New York Times*, August 8, 2004, Sec. 4, p. 2.

[48] Sunstein, *Republic.com*.

[49] As *Post* reporter Paul Farhi summarized, "The three-network universe has evolved into a far noisier electronic bazaar in the past two decades. Since the advent of the VCR in the

of 2004 in which numerous political campaign advisers and experts bemoaned, in the words of the headline, "Voters Are Harder to Reach As Media Outlets Multiply: Campaigns Struggle against Media Overload."[50]

Thus, media critics appear to be making two contradictory arguments. On one hand, some fear media are too concentrated and too few choices are available for citizens to see and hear. On the other hand, other critics claim media are too diverse and too many choices are available to us, so much so that we no longer have the ability to share common thoughts or feelings about what we see and hear in the media marketplace, or how we interact in our democracy. Well, which is it?

The reality is that citizens do face an overwhelming number of media choices today, and that probably does make it somewhat more difficult for them to have "shared experiences" involving any individual news or entertainment program. But that isn't really such a lamentable development. Government need not take steps to make sure everyone watches or listens to the same programs each night so they can all talk about them around the watercooler at work the next day. It's just as good that everyone can discuss

early 1980s, people have had no end of electronic distractions at home: multichannel cable TV and satellite service, DVD players, MP3 players, video-game consoles, digital recorders such as TiVo, high-speed Internet connections, and cell phones, among others." Paul Farhi, "Voters Are Harder to Reach as Media Outlets Multiply," *The Washington Post*, June 16, 2004, p. A15, http://www.washingtonpost.com/wp-dyn/articles/A44697-2004Jun15.html.

[50] Ibid.

something different that they saw or heard the night before. And the very fact there are so many distinct media options available to citizens is better for a healthy democracy than a limited range of media options. Again, regardless of who owns what, the fact remains that we have more sources of news, communications, and entertainment than ever before in this country.

Still, some media critics wax nostalgic about a mythical time—a supposed "Golden Age" of newspapers, radio, or television—when the populace was more closely linked or unified in some grand sociological sense by common reporting or programming options. But that is a stretch. The days when William Randolph Hearst dominated media, or when only three TV networks brought us our news at a set time each night, could hardly be labeled the "Golden Age" of those respective mediums. If that's the world media critics want us to return to, then this represents, as Jonathan Knee argues, "an argument for homogeneity hiding under the pretext of diversity."[51]

Media Substitution and the Battle for "Attention Share"

Finally, media critics will still insist that the marketplace is not truly diverse because not every citizen necessarily has access to each of the

[51] As Knee aptly notes, "One cannot help wonder what 'golden age' of news and information those who would block further industry consolidation are attempting to return us to. If it is the era when almost all Americans got their news from a combination of Walter Cronkite, David Brinkley, Howard K. Smith, and their local monopoly paper, then theirs is an argument for homogeneity hiding under the pretext of diversity." Knee, p. 20.

technologies or media outlets listed above. But this argument fails because, as the preceding review of the factual record illustrates, *all* citizens have access to more media options today than they did in past decades. Media critics are unable to muster substantive evidence to show that any niche of society is worse off in terms of access today than in the past.

When faced with overwhelming evidence of media abundance, critics quickly shift gears and instead claim that consumers do not use media interchangeably, that is, as substitutes for each other. Thus, in the minds of the critics, some media are far more important than others and new forms of media competition should not count for much, or be used as an excuse for deregulation.[52] This assertion is contradicted by the facts. The proliferation of new media outlets and sources has allowed individuals to develop more specialized viewing and listening habits, perhaps even coming to rely on only one type of media outlet while rejecting most others. That is because consumers view many forms of media as close substitutes for one another. And this substitution does not need to be perfect in order to be highly effective in checking the relative power of some media outlets relative to others.

[52] See, for example, Mark Cooper, *Comments of the Consumer Federation of America, Consumers Union, Center for Digital Democracy and Media Access Project*, "In the Matter of 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996," MB Docket No. 02-277, January 2, 2003, pp. 96-116.

In an important study on *Consumer Substitution among Media*, conducted for the FCC, Joel Waldfogel of the Wharton School notes that "we can reject the view that various media are entirely distinct…. [C]ertain media appear to compete with each other for consumers' attention," and there is "evidence of substitution by consumers between and among certain media outlets."[53] In particular, Waldfogel's research found that there is clear substitution going on between the Internet and both broadcast TV and daily newspapers, between daily and weekly newspapers, between daily newspapers and broadcast TV news, between cable and daily newspapers, and between radio and broadcast TV. But he finds less evidence to support substitution between weekly newspapers and broadcast TV, or between radio and either Internet or cable.[54]

Nonetheless, substitution among media is increasing overall and the growing substitution among media outlets means that the market will grow increasingly competitive as providers vie for consumer "attention share."[55] Consumers can choose from among several hundred TV channels and they can also access several billion pages of Web content. And many consumers do

---

[53] Joel Waldfogel, *Consumer Substitution among Media*, Federal Communications Commission, *Media Ownership Working Group Study* no. 3, September 2002, p. 3, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-226838A8.pdf.
[54] Ibid.
[55] "There is more competition than ever for the attention and money of the consumer audience," notes Benjamin Compaine. Benjamin M. Compaine, "The Newspaper Industry," in Benjamin M. Compaine and Douglas Gomery, eds., *Who Owns the Media? Competition and Concentration in the Mass Media Industry* (Mahwah, N.J.: Lawrence Erlbaum Associates, 3rd Edition, 2000), p. 54.

so interchangeably.[56] A recent UCLA World Internet Project survey found that, in 2003, Internet access consumed over five hours per week of time previously spent watching TV.[57] "[I]t seems unlikely that today's media giants will capture anything like the same share of attention online as they currently command in the offline world," conclude Gary Hamel and Lloyd Switzer.[58]

This splintering or segmentation of the consumer audience or "attention share" is driving intense competition in each layer of the media universe. "The increased competition for audiences [has] led to declines in market share for media producers in most sectors."[59] Consider the impact of segmentation and substitution on television. Geoffrey Colvin of *Fortune* has noted that "25 years ago the three major networks controlled 90% of the audience. So we've gone from each dominant player having 30% of the audience on average to each having 14%. That is not a trend toward

---

[56] Gary Hamel and Lloyd Switzer, "The Old Guard vs. the Vanguard," *The Wall Street Journal*, February 23, 2004, p. A17.

[57] "While both users and non-users in almost equal numbers acknowledge that they watch television, the biggest gap in media use between users and non-users in both 2002 and 2001 was the amount of television viewing time – and the gap is growing. Overall, Internet users watched less television in 2002 than in 2001; 11.2 hours per week in 2002, compared to 12.3 hours in 2001. In 2002, Internet users watched about 4.8 hours of television less per week than non-users – this compared to 4.5 hours in 2001. Differences in television viewing become even more pronounced as Internet experience increases. Comparing time spent with various types of media by Internet non-users, new Internet users, and very experienced users, most usage varies by only about an hour or less per week. Yet when comparing nonusers to very experienced users, television viewing drops 5.8 hours per week." *The UCLA Internet Report: Surveying the Digital Future, Year Three*, UCLA Center for Communication Policy, February 2003, p. 33, http://ccp.ucla.edu/pdf/UCLA-Internet-Report-Year-Three.pdf.

[58] Hamel and Switzer.

[59] C. Ann Hollifield, "The Economics of International Media," in Alexander, et. al., p. 91.

increasing concentration."[60] Mr. Colvin also noted that, "In the old days, if a prime-time show didn't get a rating of 20, it was in danger of cancellation. Now TV's top-rated shows typically get a 12; the finale of American Idol got a 20 and made national headlines. And of course that was on Fox, a network that didn't exist 25 years ago. The overwhelming trend is not fewer choices but increasingly splintered audiences paying attention to more media voices."[61] Similarly, David Mindich of Saint Michael's College points out that while the most popular comedy of the 1950s ("I Love Lucy") captured two-thirds of all viewers, the most popular show of the 1970s ("All in the Family") only captured half the audience and by the 1990s the most popular comedy ("Seinfeld") was only netting one-third of the total audience.[62]

The bottom line is that, no matter how one chooses to measure media "diversity," all signs are that the marketplace today is intensely competitive and offers citizens an unprecedented array of media options to meet even the most demanding tastes and particular interests.

---

[60] Geoffrey Colvin, "Mental Flab Is Worse Than Media Muscle," *Fortune*, June 23, 2003, p. 38.

[61] Ibid. Similarly, Daniel Henninger of *The Wall Street Journal* notes just how sophisticated audience tracking techniques have become to try to satisfy these new consumer demands and meet the competition: "Every program that appears on the broadcast networks and on 46 cable channels—from *Animal Planet* to all-news cable—is measured for audience size by A.C. Nielsen. And Nielsen purports to tell its network clients whether a program's audience rises or falls every 15 minutes. Because advertiser revenue tracks the mercury in Nielsen's audience barometer, TV executives can quote these ratings from memory—for their own and each competitor's programs. It is a competitive, brutal, even crazy market." Daniel Henninger, "Lou Dobbs Takes on the World," *The Wall Street Journal*, March 5, 2004.

[62] David T.Z. Mindich, *Tuned Out: Why Americans under 40 Don't Follow the News* (New York: Oxford University Press, 2005), p. 15.

III) "LOCALISM" AND MODERN MEDIA

A second popular myth circulated by critics of media liberalization is that regulation is needed to preserve "localism" and community-based media. Democratic FCC Commissioner Michael Copps argues, "Localism is one of the fundamental goals of our ownership rules and of the public interest. I believe that it is impossible to divorce localism from ownership."[63] Critics argue that market forces alone cannot guarantee the optimal supply of local fare. Leanza and Feld of the Media Access project believe that "deregulation and increased concentration result in failures in local news markets."[64] And Cooper argues that consolidation "reduces the diversity of local reporting," gives large firms "an immense amount of power to influence critical decisions," and "squeezes out the local point of view."[65] Is there any truth to such claims?

What Does the Public Really Demand?

In responding to these assertions, it is important to begin by acknowledging that while we do not really know exactly how much local fare citizens demand, they still receive a wealth of information about developments in their communities. Left to their own devices, however, it is evident that many citizens have voluntarily flocked to national sources of news and entertainment. Consider the success of *USA Today* in recent years,

---

[63] Commissioner Michael Copps, "Statement on Broadcast Localism Notice of Inquiry," July 1, 2004, p. 1, http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-129A4.doc.
[64] Leanza and Feld, p. 18.
[65] Cooper, *Media Ownership and Democracy,* p. 6.

a newspaper that didn't even exist prior to 1982. And daily editions of *The Wall Street Journal* and *The New York Times* are now delivered to homes and offices across the nation each day. Forty-nine percent of *The New York Times*' daily circulation is now outside the New York area (up from 38 percent five years ago) and the paper offers home delivery in 275 markets (up from 171 markets five years ago).[66]

Similarly, with the rise of cable television and cable "superstations" (nationwide networks) throughout the 1980s and 1990s, Americans have increasingly turned to national news and entertainment options in the video marketplace. CNN, Fox News, ESPN, TNT, WGN, The Weather Channel, HBO, and Showtime are just a few examples of popular national networks that have captured the public's attention and viewing allegiance. While the idea of 24-hour national news, sports, and weather channels was once laughed at, it quickly become obvious that the public hungered for such services. Similarly, direct broadcast satellite (DBS) exploded onto the scene in the mid-1990s and nationwide service has gone from just 70,000 subscribers in 1993 to over 23 million in 2004.[67] Nationwide satellite radio is taking off in a similar fashion.[68] The rise of the Internet has also driven many

---

[66] Robert J. Samuelson, "Bull Market for Media Bias," *The Washington Post*, June 23, 2004, p. A21.

[67] FCC, *Eleventh Annual Video Competition Report*, p. 115.

[68] See generally Sabrina Tavernise, "The Broad Reach of Satellite Radio," *The New York Times*, October 4, 2004, p. C8; Peter Johnson, "Sacked, and Now They're Back," *USA Today*, October 4, 2004, p. 5D; Howard Kurtz and Frank Aherns, "Sirius Lands a Big Dog: Howard Stern," *The Washington Post*, October 7, 2004, p. A1.

citizens to shift their attention to national (even global) sources of news and entertainment.

In sum, for whatever reason, Americans seem to be increasingly choosing national sources of media content and communications over local sources. In analyzing the impact of these developments almost 10 years ago, *Federal Broadband Law* authors John Thorne, Peter Huber, and Michael Kellogg predicted that national media content and communications links "will soon finish the job of delocalizing television, and with it public policy…. Not everyone accepts the fact yet, but the war between localism and telecommunications is over. Telecom has won."[69]

But even though there may be a natural media evolution taking place in America, with citizens opting for more national media inputs over local sources, it is obvious that many citizens continue to place a high value on being able to access some local information. In particular, local news, weather, and traffic reports are essential to the daily lives of many Americans. Others just want to see their child's name in the local paper when they score a point in a local sporting event, or retrieve coupons for a local grocery store.

---

[69] John Thorne, Peter Huber, and Michael Kellogg, *Federal Broadband Law* (Boston: Little, Brown and Company, 1995), p. 154.

It is very difficult to imagine such local information and programming disappearing in a deregulated media marketplace. Indeed, such fare is currently available in almost all local communities from daily and weekly papers, radio stations, cable channels, and even websites—even those owned by national media conglomerates. As long as citizens continue to demand local information, someone will provide it, especially in a completely deregulated media marketplace.

Critics will persist with claims that the relaxation of the national television ownership cap or the various cross ownership rules will lead to underreporting of certain local affairs, or lead to the imposition of national viewpoints for local ones. There may very well be some truth to the latter argument since, as was shown above, we know the public has increasingly opted for sources of national programming over local fare. This appears to be a natural societal shift in viewing and listening preferences that potentially would have developed much sooner if America had had more national media outlets in the past.

On this point, it is worth noting that America's sheer geographic scope may have played a large role in making "localism" in U.S. media such an important public policy value. In less geographically expansive nations such as Great Britain and France, media have long been dominated by national sources of news and entertainment. At least part of the reason for this was that newspapers, television, and radio stations in those countries were able to more easily achieve nationwide coverage. In America, by contrast, national distribution for many media providers only became possible and economically sensible in recent decades. Attempting to disseminate a daily national newspaper to the entire country in past decades would have been extremely difficult without the aid of modern means of electronic communications—such as satellite and fiber optic distribution—as well as regional production facilities.

Likewise, although national television networks did produce much programming for distribution to local affiliates in the past, prior to the 1980s it would have been very difficult and prohibitively costly for them to produce enough programming to operate 24-hour national networks. Importantly, federal spectrum allocation policies were crafted in such a way that nationwide television and radio transmission by a single broadcaster was essentially impossible. Instead, regulators decided to carve markets along local or regional boundaries and hand out licenses to serve specific communities. This is what happened when the FCC rejected an innovative spectrum allocation plan by the DuMont Television Network in the 1940s to expand channel capacity. The result of the FCC's mistake was the death of DuMont as the potential fourth television network in America.[70]

In sum, the combined impact of geography and misguided early regulatory policy decisions dealing with spectrum allocation largely led to the notion of "localism" that many pay homage to today. It could just as well have been the case that America took the opposite route (like many European countries) and pushed for end-to-end, nationwide broadcasting systems from the start. Or perhaps even a regional system such as the DuMont plan envisioned could have worked. Had that been the case, it is less likely such a fracas would have developed over "localism" in broadcasting as part of the current media ownership debate. In fact, many of the ownership rules on the books today would not exist if policymakers had made different choices decades ago, or technology would have made those options feasible earlier.

It could also be the case that the increased "nationalism" in media we are witnessing today will help offset the fears raised by some social scientists about the decline of unifying cultural themes or "common experiences" in modern society. As former FCC Chairman Powell has argued, "Network programming is a huge part of what people want to watch when they go home at night. Don't we all want to watch the Super Bowl? Don't we want to talk

[70] See David Weinstein, *The Forgotten Network: DuMont and the Birth of American Television* (Philadelphia: Temple University Press, 2004).

about *West Wing* tomorrow at work?"[71] In an age of media abundance and the hyper-specialization of news and entertainment, national programming or reporting offers at least some common news or entertainment for citizens to share or discuss.

Regardless, if the current movement toward national programming is a natural cultural and technological development, should government really have any role in curbing the resulting mix of national versus local media outputs? Even if the viewing and listening choices made by citizens result in a decline in local media relative to national programming, would critics want the government to limit consumer choices to stop this natural progression? Such a proposal would be elitist and anti-consumer.

If People Want It, Someone Will Provide It

"Localism" will continue to play a major role in the media marketplace of the future, but it will not be as dominant as it once was. Moreover, the ways in which local programming is made available to the public will continue to evolve in coming years. Large daily city newspapers will likely continue their decline in relative importance, especially as small community papers and magazines become less expensive to produce.[72] The rise of the

[71] "Powell's Agenda for '04," *Broadcasting & Cable*, January 26, 2004, p. 30.

[72] The newspaper industry is the only major media sector that is in a steady state of decline. "Over the last decade, newspaper circulation has generally declined in the face of competition from the Internet and other sources," reports Jacques Steinberg of *The New*

Internet and electronic communications technologies will also become an increasingly important source of local information. Cell phones and personal digital assistants (like pagers, Palm Pilots, and Blackberrys) already offer consumers on-the-go updates that are likely to become far more specialized in upcoming years.[73] One can easily imagine a day when such wireless media devices are coupled with geo-location technologies allowing media providers to instantaneously "spot-beam" local news and developments to your handheld devices.

National media outlets will also continue to use new targeting technologies to offer local fare as part of a national package of services. For example, in September 2004, DirecTV announced plans to spend $1 billion to launch four new satellites that will provide "local-into-local" television services, including local high-definition (HD) signals.[74] The firm plans to deliver more than 1,500 local HD channels (in addition to more than 150 national HD channels) to consumers by 2007. DirecTV already delivers local

---

York Times. He notes that average daily circulation for the nation's 841 daily newspapers fell again last year according to the Audit Bureau of Circulations. See Jacques Steinberg, "Newspaper Circulation Continues to Decline," *The New York Times*, November 2, 2004, p. C7.

[73] For example, "Thanks to Microsoft, now you can buy a watch that receives news, weather, e-mail, sports scores, stock prices, and more—all for under $300, plus the low subscription price of $9.95 a month." Grainger David, "Subscription Burnout," *Fortune*, February 23, 2004, p. 86.

[74] "DIRECTV Announces Plan to Launch Next Generation Satellites to Provide Dramatic Expansion of High-Definition and Advanced Programming Services," DirecTV, Inc., *Press Release*, September 8, 2004, available at http://www.directv.com/DTVAPP/aboutus/mediacenter/NewsDetails.dsp?id=09_08_2004A.

channels in standard definition in 130 of the nation's local 210 television markets.[75]

The Weather Channel also foreshadows what the future holds in terms of national outlets delivering more localized programming. Although it is a national cable channel, it has continuous local weather updates scrolling along the top or bottom of the screen at all times and comprehensive local weather updates at set intervals ("on the 8's"). On satellite systems, The Weather Channel also offers viewers the ability to punch their local zip code into their remote controls and retrieve the current weather and forecast for their area.

Similarly, nationwide satellite radio providers XM and Sirius announced plans in 2004 to roll out local traffic and weather report services for subscribers.[76] These national carriers understand that providing such local content is essential to their long-term viability.[77]

Finally, while proponents of tighter controls on media cross-ownership or chain ownership of local media outlets are fond of arguing that such

---

[75] "DIRECTV Announces First 12 Markets to Receive Local Channels in High-Definition This Year," DirecTV, Inc., *Press Release*, January 6, 2005, available at http://www.directv.com/DTVAPP/aboutus/mediacenter/NewsDetails.dsp?id=01-06-2005A.
[76] Anitha Reddy, "XM to Air Traffic, Weather for Region," *The Washington Post*, February 28, 2004; Page E1.
[77] See Lisa Schmeiser, "Will Lack of Local Content Hurt Satellite Radio Growth Prospects?" *Investors' Business Daily*, October 11, 2004, p. A4.

restrictions will help ensure a more responsive and independent media, that argument can actually cut both ways. While a local media owner may indeed have strong ties to its local community, those ties may be so strong as to discourage them from providing as much scrutiny of local affairs as an outsider might. For example, a family-owned local newspaper might have strong ties to a local politician or businessman and be less likely to report about a scandal than a media owner from outside that community. Scholars have found that with greater distance from political pressure and parochial ties, chain ownership can be a neutral to positive factor in terms of independent reporting.[78] Moreover, chain ownership can help ensure profitability and stability for local media outlets during turbulent economic times and provide those outlets with greater resources to expand their traditional news gathering or entertainment objectives.

Plenty of Outlets for Local Fare

Despite claims to the contrary, localism is alive and well in the modern media marketplace. While it is impossible to measure the exact amount of local fare citizens truly demand, we know numerous outlets exist for them to access the local news and information they desire. Media providers will continue to provide local fare as long as citizens demand it. "Localism" also helps traditional broadcasters differentiate themselves from newer forms of

[78] See Benjamin M. Compaine, "The Newspaper Industry," in Compaine and Gomery, pp. 20-21.

media and keeps them competitive.[79] In sum, while national news and entertainment sources have obviously become more important to most citizens in recent years, in a relative sense citizens have access to more sources of local programming as well thanks to the advent of new technologies and distribution channels.

Is it possible, however, that some communities will suffer a loss of "localism" or "ownership diversity" in a deregulated environment? If diversity is strictly defined as "one owner = one viewpoint," then, yes, some small (especially rural) communities might suffer a loss of localism when, say, Gannett purchases both newspapers in town or Clear Channel owns six of the eight local radio stations.

There are two responses to this concern, however. First, almost all communities have experienced a net increase in the overall number of media outlets and owners serving local consumers. As Table 6 illustrates, an FCC survey of 10 randomly sized media markets—from the largest (New York City) to the smallest (Altoona, Pa.)—reveals that in every case there were more media outlets and more media owners in 2000 then there were in 1960. Importantly, the FCC was being extremely conservative when compiling this data. The agency counted all the cable channels available in a media market

---

[79] Tania Panczyk-Collins, "Broadcasters Say Key to Survival Relies on Localism," *Communications Daily*, January 27, 2005, p. 3.

as part of a single cable or DBS system. Apparently the FCC didn't want to claim that each channel equaled a different media outlet even though most viewers would count them as distinct media outlets. Moreover, national newspapers are not included in the count, nor are Internet sites taken into account as alternative media sources. Thus, the diversity picture is even brighter than this table suggests.

Table 6: Comparison of Media Outlets and Owners for 10 Selected Media Markets (1960-2000)

		1960		1980		2000		% Change '60-'00	
Market Rank	City	Outlets	Owners	Outlets	Owners	Outlets	Owners	Outlets	Owners
# 1	New York, NY	89	60	154	116	184	114	107%	90%
# 29	Kansas City, MO	22	16	44	33	53	33	141%	106%
# 57	Birmingham, AL	28	20	44	34	59	38	111%	90%
# 85	Little Rock, AR	17	14	35	30	60	33	253%	136%
# 113	Lancaster, PA	14	10	21	16	25	20	79%	100%
# 141	Burlington, VT / Plattsburgh, NY	15	13	37	28	53	34	253%	162%
# 169	Myrtle Beach, SC	6	6	22	16	38	23	533%	283%
# 197	Terre Haute, IN	12	8	26	19	33	22	175%	175%
#225	Charlottesville, VA	8	5	13	10	23	14	188%	180%
# 253	Altoona, PA	11	9	19	12	23	15	109%	67%
								195%	**139%**

Source: Federal Communications Commission, Media Ownership Working Group, September 2002.

Of course, there may be some communities (especially very small rural media markets) that have not experienced similar gains over the past 40 years. But this leads to a second counter-argument: how are we defining "media markets"? Again, with the rise of more regional and nationwide media outlets, it is increasingly difficult to nail down exactly where one media market begins and another ends. Even if Gannett owns both local newspapers or Clear Channel has six of the eight local radio stations, that does not mean other sources of news and entertainment don't exist. Other media outlets, even many located outside the community, might still be able to provide important local information to the community, as is the case with XM and Sirius providing local news, weather, and traffic reports. And new media services and technologies, especially the Internet, make it increasingly possible for local reporting to take on a different dimension than it did in the past. The increasing popularity of weekly or semi-weekly newspapers, for example, may provide most of the local fare citizens desire while they get the rest of their news and entertainment from national media outlets.

Again, before the critics of media decontrol attempt to rally the opposition to media liberalization around the flag of "localism," they should ask themselves if the *relative* decline in local media is simply a natural development resulting from the voluntary choices made by millions of American citizens.

And we should never forget that, in the aggregate, the overall amount of local programming continues to increase even as it becomes less popular than national programming. As part of its June 2003 media ownership rulemaking, the FCC took an in-depth look at claims made by some critics that there is less local news and public interest programming available to the public today than in the past. Here is a summary of the FCC's major findings by decade:

> * <u>1960s</u>: "An informal analysis of the news and public interest programming available to the public over television in 1960, revealed that in selected sample markets, local news programming in 1960 was limited to approximately one or two hours per-station, per-day (or a total of three to five hours of local news programming produced daily by all television stations combined in a given market). National news programming in 1960 was in most cases limited to anywhere from five minutes per-station, per-day, to one hour per-station, per-day. As a result, in most markets, there was less than one-hour of national news programming broadcast daily by all the stations combined in a given market. Programming characterized as "public interest programming" on average was aired for about two to three hours per station, per-day (or approximately six to nine hours of public interest programming produced per-day by all stations combined in the markets we reviewed)." (pp. 34-35)

> * <u>1980s</u>: "Our informal analysis of the news and public interest programming available to the public via television revealed that, on average, most television stations in the markets we reviewed were airing more local news programming in 1980 than they did in 1960, though some small market stations were airing less local news programming." (p. 39)

> * <u>2003</u>: "The number of hours of news and public interest programming has also grown significantly since 1980. Whereas in 1960 and 1980, there was on average only about one or two hours of local news programming per-station, per-day in the markets we reviewed, local news programming expanded to about two to four hours per station per day by 2003. In addition, several regional and local news networks were launched between 1980 and 2003, providing local news on a 24-hour basis in numerous markets throughout the country. Although in most markets, only a few stations increased the amount of national news programming available from 1980, when national news was aired for about thirty to forty five minutes per station per day, there were more broadcast stations airing national news in 2003, and several non-broadcast news networks airing national news programming on a 24-hour a day basis. Public interest programming also has proliferated." (p. 47)

IV) CONCENTRATION MYTHS

A common theme of much of the literature penned by media critics is that what we are seeing in today's modern media industry is a case of catastrophic market failure that must be reversed by comprehensive government regulation. In particular, critics claim that media is concentrated in the hands of only a few mega-conglomerates.

Surprisingly, for all the fuss over this supposed "media monopoly," the critics never seem to able to arrive at any sort of a consensus about how many companies they're talking about. In a recent book, Lessig says "just *three* companies control more than 85 percent of media," but two sentences later cites other sources saying the number is *five*.[80] Controversial documentary maker Michael Moore claims that, "By the end of the millennium *five men* controlled the world's media."[81] And at one point in their manifesto *Our Media, Not Theirs*, Nichols and McChesney say "the U.S. media system is dominated by about *ten* transnational conglomerates" and then less than 30 pages later say that "*two dozen* profit-seeking transnational corporations… rule U.S. media."[82] (In an earlier book, McChesney claimed the number was *seven*.)[83]

---

[80] Lessig, p. 162.
[81] Quoted in Nichols and McChesney, p. 114.
[82] Ibid. pp. 48, 73.
[83] McChesney, *Rich Media*, p. xxvi.

Three, five, seven, ten, two dozen. Well, which is it? It seemingly makes little difference to the media critics who go on to make sweeping and quite radical claims about how commercial media can never truly serve citizens or democracy. In large part the critics' case against modern media is a case against commercialism or capitalism in general. Critics argue that modern media is hopelessly over-commercialized and that for-profit media will always fail to account for the needs of a diverse citizenry.[84]

Contrary to these claims, the media marketplace is vigorously competitive today and, as made clear above, different media sectors do compete with one another. But while it is an unassailable fact that consumers have more choice than ever before, what about ownership diversity? Has the number of owners shrunk relative to the number of outlets? As discussed in the previous section, a wide-ranging FCC survey of large and small media markets across America from 1960 to 2000 revealed that "Collectively, the number of media outlets and owners increased tremendously over the 40-year period from 1960 to 2000. The percent increase in the number of outlets averaged almost 200 percent across all ten markets. The percent increase in owner count, somewhat less dramatic due to

[84] "[T]he corporate commercialism so rampant in today's media has dramatically undermined the potential contribution of the media to our public life," argue David Croteau and William Hoynes, authors of *The Business of Media: Corporate Media and the Public Interest* (Thousand Oaks, CA: Pine Forge Press, 2001), p. 243.

consolidation, averaged 140 percent."[85] And McKinsey & Company director Michael J. Wolf also notes that "There are more than 100 media companies worldwide with more than $1 billion in revenues; and entertainment and media are still fragmented compared with other industries such as pharmaceuticals and aerospace."[86]

Making Sense of Concentration Ratios and Results

But even if the number of outlets and owners is increasing in the aggregate, isn't ownership within America's media marketplace significantly more concentrated than it was in past decades? Contrary to the views expressed by media critics, the media industry is not substantially more concentrated today than it was 10 or 20 years ago. As Benjamin Compaine, author of *Who Owns the Media?*, has found: "Even after a period of mild deregulation and high-profile mergers, the top 10 U.S. media companies own only a slightly bigger piece of the overall media pie than the top 10 of two decades ago."[87]

[85] Scott Roberts, Jane Frenette, and Dione Stearns, "A Comparison of Media Outlets and Owners for Ten Selected Markets: 1960, 1980, 2000," Federal Communications Commission, *Media Ownership Working Group Study* no. 1, September 2002, p. 2, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-226838A2.pdf.

[86] Michael J. Wolf, "Here Comes Another Wave of Media Mergers," *The Wall Street Journal*, February 21, 2002.

[87] Benjamin Compaine, "Domination Fantasies," Reason, January 2004, p. 31.

Two important caveats are in order before a closer examination of media concentration surveys and measurements. First, it is vitally important to realize that comparisons to the past using strict concentration indices are greatly complicated by the fact that the media marketplace has expanded so rapidly, with new technologies and players constantly entering (and exiting) the picture. It is an extremely dynamic industry. Compaine's research has shown, for example, that half the companies found on the top 50 list of media companies in 1997 were not on the 1986 list.[88] Thus, regardless of what concentration surveys or measures reveal at any given moment, such a "snapshot" of media ownership does not necessarily tell the whole story. It fails to explain how markets might be evolving, or what new developments might be shaking things up.

Second, on a related note, how markets are defined has an important bearing on the results of these concentration surveys. If the "relevant market" is too narrowly defined and does not include the potential substitutes or true competitors, then concentration ratios are likely to be artificially inflated and meaningless.[89] And Jeffrey L. Harrison of the University of Florida notes that "markets can rarely be defined with precision. Thus, market definition and the determination of market power

[88] Compaine and Gomery, p. 541.

[89] "Two economists attempting to define a relevant market can, and often do, reach divergent conclusions regarding market definition," argue economists David L. Kaserman and John W. Mayo in *Government and Business: The Economics of Antitrust and Regulation* (Fort Worth, TX: The Dryden Press, 1995), p. 111.

remain activities that are 'art' as much as 'science.'"[90] Thus, the really important question in these debates is who defines the market and how narrowly they do so.[91]

For example, if an economist or a regulator set out to evaluate market concentration in the market for online book sellers and only included the current primary online vendors such as Amazon.com and Barnes and Noble.com, then at first blush this would appear to be a very highly concentrated industry. But that would not be indicative of the true nature of the marketplace or competition in this sector since online firms obviously compete against traditional "bricks and mortar" bookstores as well. Moreover, online booksellers don't just sell books. They sell such a wide array of products that they are considered "online retailers" by many. Thus, they compete against offline retailing powerhouses such as WalMart, Target, and so on (and those firms' websites as well). Therefore, despite a high concentration ratio for online book sellers, it is obvious that Amazon.com and Barnes and Noble.com face cutthroat competition from a relevant market that includes myriad players and potential substitutes. As a result, most analysts and consumers alike would agree that prices remain very competitive, and that quality and quantity are increasing regardless of what any concentration surveys reveal.

---

[90] Jeffrey L. Harrison, *Law and Economics* (St. Paul, MN: Thomson West, 2000), p. 265.
[91] "Who Defines a Market?" *The Wall Street Journal*, February 23, 2004, p. A16.

To summarize, the important point to keep in mind when evaluating concentration surveys is that, "Market definition – both product market definition and geographic market definition – is important in any measure of concentration."[92] Not only must the entire geographic extent of the market be properly understood, but all the potential substitutes must be considered. In the media world, this is a vital point since "traditional media are finding a blurring of the boundaries among themselves"[93] as new technological and marketplace developments upend older business models, delivery mechanisms, pricing schemes, and market definitions. Bottom line: "There cannot be a single 'correct' way to measure concentration if people differ about the nature of the problem, its effects, and its proper remedies."[94]

With those caveats in mind, we can explore the results of media industry concentration surveys. The most popular concentration measure used by economists and government officials is known as the Herfindahl-Hirschman Index (HHI). The HHI is the sum of the squared market shares of every firm in a certain market. A perfectly concentrated marketplace, therefore, would consist of a single firm with 100 percent market share, or a

---

[92] Michael R. Baye and John Morgan, "Competition in Internet Industries: Evidence from E-retailing," *OII Internet Issue Brief* no. 1.2, November 2003, http://www.oii.ox.ac.uk/resources/publications/OIIIB1-2_1103.pdf.

[93] Compaine and Gomery, p. 541.

[94] Bruce Owen, "Confusing Success with Access: 'Correctly' Measuring Concentration of Ownership and Control in Mass Media and Online Services," Stanford Law School, Olin Program in Law and Economics, *Working Paper* no. 283, May 2004, p. 4, *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=545302*

10,000 HHI (100 squared). If a given market had five perfectly equal competitors with 20 percent market share, the HHI would be 2000. Antitrust officials at the Department of Justice (DOJ) and the Federal Trade Commission (FTC) have adopted the HHI as a tool to help them determine when an antitrust case should be brought or a proposed merger denied. As a general rule of thumb, a market exhibiting an HHI below 1,000 is viewed as unconcentrated, a market with an HHI between 1,000 and 1,800 is considered moderately concentrated, and a market with an HHI over 1,800 is viewed as highly concentrated under current DOJ and FTC guidelines.[95]

The most recent and comprehensive HHI surveys for the media sector have been conducted by Eli Noam, director of the Columbia University Institute for Tele-Information. Noam has examined 95 different media subsectors and calculated HHI ratios for each and then aggregated the data into four major industry sectors: mass media, telecommunications, information technology, and the Internet. He then again aggregated the results for those four sectors into a single "information sector" to survey concentration trends on the broadest possible basis.[96] His preliminary data show that concentration of the entire information sector declined from 1984

[95] U.S. Department of Justice and Federal Trade Commission, *1992 Horizontal Merger Guidelines*, April 2, 1992 (revised April 8, 1997), http://www.usdoj.gov/atr/public/guidelines/hmg.htm.

[96] For preliminary data, see Eli M. Noam, "Internet Concentration – and What it Tells Us About the Problems of the Information Economy," February 2004, http://www.law.msu.edu/quello/noam_file.pdf; Eli M. Noam, "The Internet: Still Wide Open and Competitive?" November 8, 2002, http://www.marconifoundation.org/documents/noam.PDF.

to 1996, but then rose slightly after that point. The overall concentration level today, while up slightly since 1996, is much lower than it was before 1983. From 1988 to 2001, the HHI for the entire information sector generally hovered around 1,500. Again, under current DOJ-FTC antitrust guidelines, this would only be considered moderate concentration. Of the four major information industry subsectors Noam surveys, the mass media sector (which includes broadcasting and cable TV) actually exhibits the lowest levels of concentration. Only recently did overall mass media concentration approach the 1,000 "unconcentrated" threshold on the HHI index.

By contrast, an earlier HHI survey by Compaine came up with much lower overall concentration numbers. His 1997 survey of the top 50 media companies showed an aggregate HHI of only 268, up slightly from 205 in 1986. "[T]he media industry remains one of the most competitive major industries in U.S. commerce," concluded Compaine.[97] The differences between Noam and Compaine's HHI results come down to differences in survey methodologies and determinations about how broadly to define the marketplace. Again, this illustrates why concentration numbers must be carefully scrutinized and put in the proper context.

What's the Magic Number?

[97] Compaine and Gomery, p. 562.

So, what's the "right number" of media providers in each community or for the entire nation? What is the optimal HHI result for the media sector? And what's the optimal size for a media enterprise in today's marketplace? There are no correct answers to such questions. As the FCC has noted, "Innovation is not just a matter of preserving a 'magic number' of independent owners in a market. Such a scheme would ignore the fact that the most potent sources of innovation often arise not from incumbents but from new entrants."[98]

While Noam remains concerned about concentration in some information sectors, his general conclusion should assuage his own concerns: "[W]hile the fish in the pond have grown in size, the pond did grow too, and there have been new fish and new ponds."[99] In other words, as stated above, the media marketplace is very dynamic with new types of outlets and technologies developing constantly. Even if only five to ten large firms dominated the industry as some critics claim—although they can never quite agree on a number—that would hardly be synonymous with a "media monopoly." In fact, five to ten major competitors in many other markets would be considered a fairly competitive marketplace. But despite the existence of a handful of very large conglomerates in today's media

---

[98] FCC, *Media Ownership Proceeding*, p. 14.

[99] Eli M. Noam, "Media Concentration Trends in America: Just the Facts," *In the Matter of 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, January 2, 2003, p. 2, http://www.citi.columbia.edu/research/readings/mediaconcentration.pdf.

marketplace, dozens of other important media companies continue to thrive and fill important niches missed by larger firms. There are, as Noam suggests some big fish, many smaller fish, and many ponds for them all to swim in. Table 7 illustrates this reality documenting almost 70 media companies and the niches they serve.

Table 7: Media Monopoly or Too Much Competition?

	TV Networks	TV Stations	TV Production / Distribution	Cable Systems / Channels	Radio Stations / Programs	Movie Prod. / Distribution	Newspapers / News Delivery	Magazines	Book Publishing	Music	Internet Access / Services	Sports Venues	Resorts / Theme Parks	Theaters	VoIP Telephony
Disney (ABC)	x	x	x	x	x	x		x	x	x	x	x	x		
News Corp. (Fox)	x	x	x	x		x	x	x	x	x		x			
AOL / Time Warner	x			x		x		x	x	x	x	x	x		
Universal / NBC	x	x	x	x		x					x		x		
Viacom			x	x		x			x	x			x	x	
Sony		x	x			x				x	x				
Comcast	x										x	x			x
Cox		x		x	x		x								x
EchoStar				x							x				
XM Satellite Radio					x										
SIRIUS Satellite Radio					x										
Cablevision	x											x		x	x
Freedom Communications	x						x								
Belo		x	x	x			x								x
New York Times Co.		x		x	x		x					x			
Tribune Co.		x		x	x		x	x			x	x			
Dow Jones		x					x	x							
Washington Post Co.		x					x	x			x				
Gannett		x					x								
Hearst-Argyle		x		x	x	x	x	x			x				
Knight Ridder							x								
Media General		x					x								
E.W. Scripps		x		x			x								
Pulitzer Inc.							x								
Copley Press Inc.							x								
McClatchy Co.							x								
Liberty Group Publishing							x								
Associated Press							x								
Reuters							x								
United Press Intl.							x								
Liberty Media			x	x		x									
Bertelsmann (Ger)								x	x	x					
Primedia			x	x		x		x							
Sinclair Broadcasting		x													
CBS	x	x			x										

	TV Networks	TV Stations	TV Production / Distribution	Cable Systems / Channels	Radio Stations / Programs	Movie Prod. / Distribution	Newspapers / News Delivery	Magazines	Book Publishing	Music	Internet Access / Services	Sports Venues	Resorts / Theme Parks	Theaters	VoIP Telephony
Clear Channel		x	x		x					x		x			
Entercom					x										
Citadel Communications					x										
Radio One					x										
Susquehanna Radio				x	x						x				
Emmis Communications		x			x			x	x						
Discovery Communications			x	x											
Dreamworks SKG			x			x				x					
Landmark Comm		x		x			x								
McGraw-Hill		x						x	x						
Houghton Mifflin Company									x						
Meredith Corp		x						x	x						
MGM			x			x			x					x	
Scholastic			x					x	x						
EMI (U.K.)										x					
Virgin (U.K.)									x	x					
Community Newspaper Hldg.							x								
MediaNews Group		x			x		x								
Morris Comm.					x		x	x	x						
Advance Publications							x	x							
Lee Enterprises							x	x							
Pearson (Penguin / FT) (Br)			x				x		x						
Bloomberg			x	x	x			x	x						
Forbes Inc.			x					x							
Ziff-Davis								x							
Hachette Filipacchi (Fr)								x							
Reader's Digest Association								x	x	x					
American Media, Inc.								x							
Rodale, Inc.								x	x						
Wenner								x	x						
Vulcan				x	x			x				x			
Reed Elsevier								x	x						

Importantly, mergers represent just one of many strategies media companies utilize to meet consumer demand. Other strategies include spin-offs and line-of-business divestitures on the one hand, and new technological investments or expanded product or service offerings on the other. Of course, as Compaine correctly observes, "Break-ups and divestitures do not generally get front-page treatment."[100] Consider, for example, the late 2003 announcement by Cablevision that it was spinning off its satellite and national programming arm into an entirely new, distinct company, Rainbow Media Enterprises.[101] The move generated barely a whisper in the mainstream press and the few stories that were written about the divestiture were buried mostly in the back pages of business magazines. By contrast, if Cablevision had proposed the opposite—a takeover of a satellite distributor or a programming company—it likely would have garnered significant press coverage.[102] Similarly, Liberty Media's continuing push to break apart the firm into smaller, independent media operations has generated little attention.[103] Where, incidentally, are the cries of "media conspiracy" when such divestitures and spin-offs go all but unreported? (To be fair, when media giant Viacom announced in March of 2005 that is was considering breaking

[100] Compaine, "Domination Fantasies," p. 28.

[101] Marc Gunther, "Cablevision's New Frontier" *Fortune*, June 14, 2004, pp. 144-50; Tara Murphy, "Cablevision To Spin Off Rainbow Media," *Forbes.com*, May 10, 2004, http://www.forbes.com/markets/2004/05/10/cx_tm_0510video2.html.

[102] Likewise, few paid any attention when, in November of 2004, AOL announced it was splitting into four separate units. See David A. Vise, "AOL to Be Split into Four Units," *The Washington Post*, November 9, 2004, p. E1.

[103] Martin Peers, "Liberty Media Unveils Plans to Spin Off Its Discovery Stake," *The Wall Street Journal*, March 16, 2005, p. A3.

the company into smaller units, the media *did* provide fairly significant, front-page coverage).[104] Finally, as Compaine notes, the arrival of new players, the shrinkage of old ones, and the incremental growth of smaller companies from the bottom up do not attract the same press attention as mergers and acquisitions.[105]

The many strategies discussed above represent just a few ways media companies have sought to adapt and grow their businesses over time. But they don't always work, and new strategies are always being employed in this highly dynamic industry.[106] Moreover, the market will often act to punish joint media ventures and acquisitions that don't make sense. As James Owers, Rod Carveth and Alison Alexander note, "Although the notion of synergy is particularly pleasing conceptually, empirical research often fails to identify material evidence that it is realized, particularly in domestic mergers."[107] In fact, their research has found that approximately 75 percent

---

[104] Joe Flint, "As Viacom Ponders a Breakup, Industry Rethinks Old Notions," *The Wall Street Journal*, March 17, 2005, p. A1.

[105] Compaine, "Domination Fantasies," p. 28.

[106] See: Frank Ahrens, "Media Firms Piece Together New Strategies," *The Washington Post*, March 22, 2005, p. E1. "After a decade of growth by acquisition, media conglomerates such as Viacom, Sony Corp. and Time Warner Inc. are beginning to reconfigure, pushed by new technologies and changing consumer habits. At the same time, the 1990s cookie-cutter model of a media giant—take one television network, add a movie studio, theme parks, music company and maybe a pro sports team—is falling from favor, as companies settle on their core identity, analysts said."

[107] James Owers, Rod Carveth, and Alison Alexander, "An Introduction to Media Economics Theory and Practice," in Alexander et. al., p. 39. Gary W. Ozanich and Michael O. Wirth concur: "The torrid pace of mergers and acquisitions [in recent years] were anchored in future plans centered on convergence and a belief in synergistic benefits on both the revenue and cost side. The short run financial results of these activities, two or three years after the transaction and in the aftermath of the stock market bubble of the late 1990s,

of all mergers are at least partially reversed by divestitures within 10 years.[108]

On this point, these authors and others specifically cite the recent troubles of the AOL-Time Warner, which announced their plans to merge in early 2000. Despite grand pronouncements made at the time about the synergies of content and online services, those benefits largely failed to materialize, apparently due to infighting among various divisions.[109] Recall that when the AOL-Time Warner marriage was announced just five years ago, it made front-page news across the nation and generated a great deal of hand-wringing and hysteria. But despite claims that the AOL-Time Warner deal represented "Big Brother," "the end of the independent press," and a harbinger of a "new totalitarianism," it turns out that AOL-Time Warner was "the Big Brother who never was," in the words of *Reason* magazine's Matt Welch.[110] In fact, by April of 2002, just two years after the marriage took

have been negative, as indicated by the price of securities, changes in management, disappointing financial results, and plans to break-up merged companies." Gary W. Ozanich and Michael O. Wirth, "Structure and Change: A Communications Industry Overview," in Alexander et. al., pp. 81-82.

[108] Ibid.

[109] Although the company's problems have not generated much front-page or prime-time news, three recent books have summarized the ongoing problems with this deal. Nina Munk, *Fools Rush In: Steve Case, Jerry Levin, and the Unmaking of AOL Time Warner* (New York: Harper Business, 2004); Alec Klein, *Stealing Time: Steve Case, Jerry Levin, and the Collapse of AOL Time Warner* (New York: Simon & Schuster, 2003); Kara Swisher and Lisa Dickey, *There Must Be a Pony in Here Somewhere: The AOL Time Warner Debacle and the Quest for a Digital Future* (New York: Crown Business, 2003).

[110] Matt Welch, "The Big Brother Who Never Was," *The National Post*, July 27, 2002, http://www.mattwelch.com/NatPostSave/AOL.htm.

place, the firm had reported a staggering $54 billion loss.[111] Losses grew to $99 billion by January of 2003.[112] And then in September of 2003, Time Warner decided to drop AOL from its name altogether.[113] It would be an understatement to say that the merger failed to create the sort of synergies (and profits) that were originally hoped for.

Similarly, the Walt Disney Corporation's recent internal problems also point to the potential for ongoing shake-ups within large media operations.[114] After major battles on Disney's board of directors in the wake of a takeover threat by cable giant Comcast, there was talk of spinning off divisions to refocus on other priorities. For example, in late March 2005, Disney parted ways with is successful and critically acclaimed Miramax movie studio after years of feuding with its directors.[115]

These examples show that markets will act to counter business deals or corporate arrangements that may not make sense from either a

---

[111] Frank Pellegrini, "What AOL Time Warner's $54 Billion Loss Means," April 25, 2002, *Time Online Edition*, available at http://www.time.com/time/business/article/0,8599,233436,00.html.

[112] Jim Hu, "AOL loses Ted Turner and $99 billion," *CNet News.com*, January 30, 2004, available at http://news.com.com/AOL+loses+Ted+Turner+and+99+billion/2100-1023_3-982648.html.

[113] "AOL Time Warner drops 'AOL,'" *BBC News*, September 18, 2003, available at http://news.bbc.co.uk/1/hi/business/3121128.stm.

[114] Frank Ahrens, "Eisner Loses One Title in Disney Shake-Up," *The Washington Post*, March 4, 2004, p. A1, http://www.washingtonpost.com/wp-dyn/articles/A28630-2004Mar3.html.

[115] Merissa Marr, "As Weinsteins Exit Disney, A Murky Script," *The Wall Street Journal,* March 30, 2005, p. B1; Laura M. Holson, "Negotiating a Big-Screen Divorce," *The New York Times*, January 12, 2005, p. B1.

shareholder or consumer perspective. "The notion that 'bigger is better' is not always correct and the degree of difficulty in running these behemoths is a major lesson for the industry," argue Owers, Carveth, and Alexander.[116] Moreover, Ozanich and Wirth argue that "evidence is mounting that the trend toward conglomeration has peaked and that the next trend may be spin-offs resulting in deconglomeration."[117]

The Benefits of Scale

Nonetheless, mergers and acquisitions have played, and will continue to play, a very important role in the evolution of America's media sector. To become a *major* media presence and meet the demands of modern media consumers, firms will need significant economies of scale to compete. The choice and competition that consumers have at their disposal today are due, at least in part, to the fact that many smaller media operators have significantly ramped up the scale of their business operations to expand news coverage and entertainment options. Much of the consolidation we have seen in recent years has also been a response to rising competition from new outlets and technologies. As this competition has segmented the media market and given consumers more options, many traditional media outlets have used consolidation as one method of offsetting increased audience

[116] James Owers, Rod Carveth and Alison Alexander, "An Introduction to Media Economics Theory and Practice," in Alexander et. al., p. 15.
[117] Gary W. Ozanich and Michael O. Wirth, "Structure and Change: A Communications Industry Overview," in Alexander et. al., p. 82.

fragmentation. In this sense, consolidation can be viewed as a defensive, "circle the wagons" strategy by older media outlets.[118]

Importantly, competition and concentration are not mutually exclusive; citizens can have more choices even as the ownership grows somewhat more concentrated or vertically integrated. Some media critics, however, seem to imagine that the needs of the marketplace could be met by thousands of small "mom-and-pop" media outlets that each only owned and operate a single newspaper, television station, or cable company. But this atomistic view of media simply does not mesh with economic reality. The economics of mass media are not those of a lemonade stand. It takes significant scale and scope to provide the public with much of the information and entertainment they desire. For example, 98 percent of cities only have a single daily newspaper because the fixed costs associated with producing the very first copy of the paper can run as high 40 to 45 percent of the total cost of operating the paper.[119]

Similarly, 24-hour national cable news channels, and even local broadcast stations to some extent, are expected to be able to provide coverage

---

[118] Christopher Dixon, managing director of Gabelli Group Capital Partners, has argued that consolidation was tantamount to a "circle the wagons" strategy by major media operators in response to audience declines and fragmentation. "The [ownership] consolidation offset the [audience] fragmentation," he says. Cited in Jon Ziomek, "Journalism Transparency and the Public Trust," Aspen Institute *Report of the Eighth Annual Aspen Institute Conference on Journalism and Society*, 2005, p. 17.

[119] Robert G. Picard, "The Economics of the Daily Newspaper Industry," in Alexander et. al., pp. 110, 115.

from the front lines of an overseas conflict one minute and then switch back to coverage of a local trial the next. That is not something a small "mom-and-pop" media outlet would be capable of producing. And consider the skyrocketing costs of sports and entertainment programming. The estimated cost of producing a one-hour-long drama episode for television is $1.6 million-$2.3 million per episode, and the most popular dramas can cost many multiples of that.[120] Likewise, a half-hour sitcom episode is estimated to run $1 million–$1.5 million per episode, with the most popular shows again costing much more than that.[121] And a recent FCC report on broadcast industry economics reported that ABC, CBS, NBC and Fox each spend over a $1 billion annually just to acquire the rights to popular sports programming, and then must expend large sums to cover and produce sporting events.[122] It is unlikely that a "mom-and-pop" media provider could cover the costs of producing such programming.

These are the hard economic realities for which media providers must plan if they hope to survive in today's vigorously competitive marketplace. "During the past decade, the increase in competition in the television market has driven both broadcast networks and station groups to seek ever-greater

---

[120] "Broadcast Network Programming Development 101," *Submission of ABC, CBS, FOX, and NBC to Federal Communications Commission*, April 2003, p. 26, http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6514082666.

[121] Ibid.

[122] Jonathan Levy, Marcelino Ford-Livene, and Anne Levine, "Broadcast Television: Survivor in a Sea of Competition," Federal Communications Commission, *OPP Working Paper Series*, no. 37, September 2002, p. 122, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-226838A22.doc.

economies of scale and scope to offset challenges to their revenue," summarizes Douglas Ferguson.[123] Jonathan Knee argues the same is true when it comes to the importance of scale for daily newspapers. "In the current industry structure, the real challenge to newspapers is not how to maintain multiple voices, but how newspaper's unique voice can be heard above the din of other media."[124] This is especially the case since newspaper readership continues a steady decline as younger consumers continue to opt for other media sources, such as the Internet and cable TV.[125] According to Newspaper Association of America surveys, while almost 73 percent of 18 to 24-year-olds read a daily newspaper in 1970, only 39 percent did in 2004.[126] Overall, the percentage of all Americans who read a daily newspaper has fallen from over 77 percent in 1970 to roughly 53 percent in 2004.[127] Meanwhile, from 1998 to 2004, revenue generated by Internet help-wanted ads grew by a whopping 400 percent while newspaper help-wanted advertising fell by 40 percent over that same period.[128]

---

[123] Douglas A. Ferguson, "The Broadcast Television Networks," in Alexander et. al., pp. 151-52.

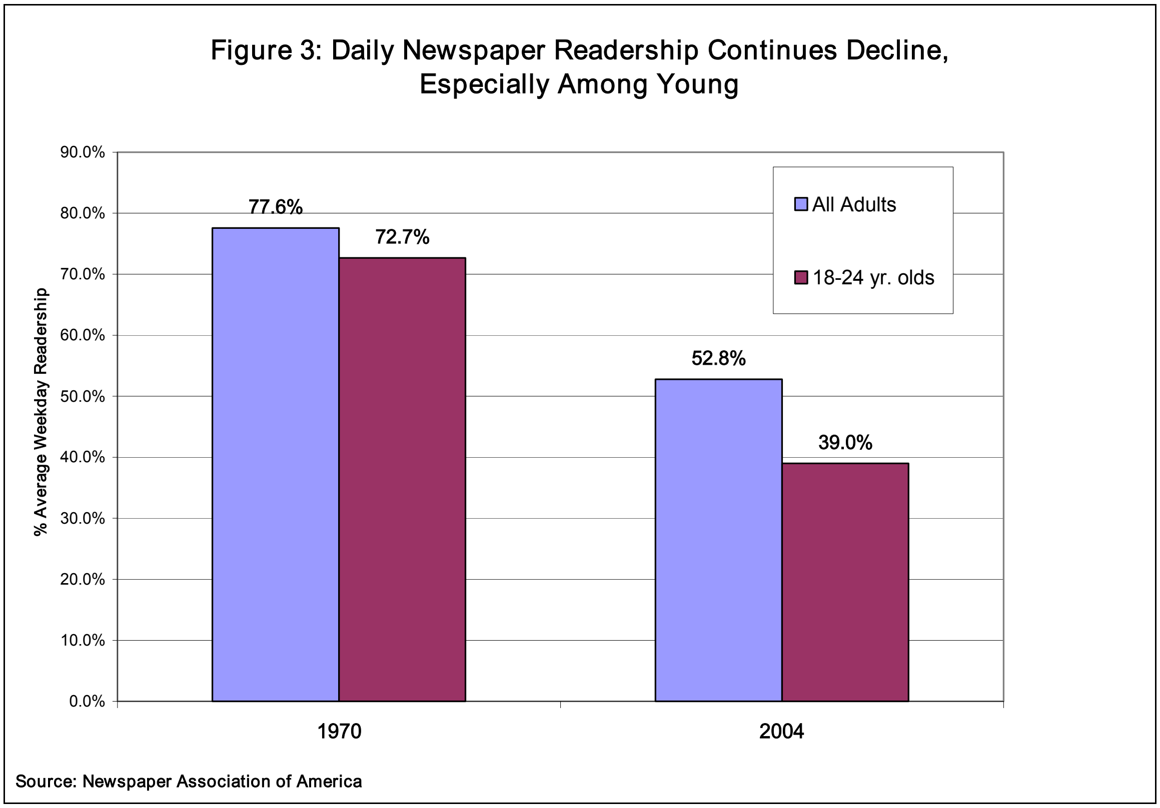
[124] Knee, p. 20.

[125] "Underlying the declines in [newspaper] readership at many major newspapers are two ominous threats: The most-dedicated newspaper readers are aging. And they aren't being replaced with enough young readers, because many young people don't read papers for news but get their news instead from the Internet and 24-hour cable TV." Ray A. Smith, "$9 an Hour and All the News You Can Read," *The Wall Street Journal*, January 18, 2005, p. B1.

[126] "Readership Statistics," Newspaper Association of America website, http://www.naa.org/artpage.cfm?AID=1468&SID=1022.

[127] Ibid.

[128] Morgan Stanley data cited in Frank Ahrens, "Hard News: Daily Papers Face Unprecedented Competition," *The Washington Post*, February 20, 2005, p. F1.



As technological and cultural changes continue to transform the way the public receives news and how businesses advertise, Knee argues that newspapers will need "sufficient critical mass to ensure that they are not reduced to mere spectators in this unfolding drama."[129] He concludes:

> Scale can provide the organizations with the financial flexibility to respond to changing circumstances and invest in new initiatives that may not be immediately profitable. Even something as simple as expanded news coverage of important topics can become financially challenging without a broader base of assets over which to spread the

[129] Knee, p. 20.

cost. Wire stories, rather than independent reporting, increasingly dominate the content of local papers. Having the combined resources of the newsrooms of both a local TV station and newspaper could facilitate more original reporting.[130]

Moreover, the claim made by some critics that relaxation of ownership rules will lead to disastrously one-sided news just doesn't square with logic or evidence. In many markets, newspaper-television cross-ownership currently exists because of waivers to the rules or grandfathering of older alliances before the rules went into effect. Those markets have robust competition and news coverage and there is no evidence the grandfathered entities are hopelessly biased. Indeed, the second of the FCC 12 Media Ownership Working Group studies on viewpoint diversity in cross-owned entities revealed that "common ownership of a newspaper and a television station in a community does not result in a predictable pattern of news coverage and commentary about important political events in the commonly owned outlets."[131]

Thus, increased scale and vertical integration should not be viewed as an evil, but rather a necessary strategic option firms can employ to attain the

[130] Knee, p. 19.
[131] David Pritchard, "Viewpoint Diversity in Cross-Owned Newspapers and Television Stations: A Study of News Coverage of the 2000 Presidential Campaign," Federal Communications Commission, *Media Ownership Working Group* no. 2, September 2002, p. 2, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-226838A7.pdf.

assets, skills, and financing necessary to remain a player in today's vigorously competitive media marketplace. The FCC prohibitions on vertical integration smacks of anti-capitalist industrial policy and puts the agency in the position of attempting to dictate efficient market structures *a priori*, something it has not had an impressive track record doing in this or other sectors in the past.

Getting Bigger, Getting Smaller

It is important, however, to recognize some countervailing trends that cut in the opposite direction. As illustrated in above, the irony of the media marketplace circa 2004 is that, in a sense, it is getting both bigger and smaller at the same time.[132] That is, while major media providers are massive companies with numerous divisions, there also exist countless outlets for niche media in today's world of hyper-specialization or increased audience segmentation. For example, in predicting the leading trends in television over the next five years, Comcast CEO Brian Roberts argues that media personalization and "TV on your terms" will be a dominant theme.[133] Microsoft's Bill Gates predicts a future of highly personalized television "that will simply show what we want to see, when we want to see it."[134] And

---

[132] As long ago as 1995, Nicholas Negroponte pointed this out in his brilliant book *Being Digital*. "In the information age, mass media got bigger and smaller at the same time." Nicholas Negroponte, *Being Digital* (New York: Knopf, 1995), p. 164.

[133] Brigitte Greenberg, "Roberts Says Comcast Will Stay Committed to Its Core Business," *Communications Daily*, March 9, 2004, p. 9.

[134] Quoted in Greg Levine, "Gates: DVDs Obsolete within Ten Years," *Forbes.com*, July 13, 2004, http://www.forbes.com/2004/07/13/0713autofacescan05.html.

Washington Post columnist Steven Pearlstein predicts that, "For better or worse, the one-size-fits-all era is now history. In the future, readers and viewers will be able to get only the news and features they really want at a price they are willing to pay for them."[135]

Much of this media specialization and personalization has been fueled by the rise of the Internet, personal storage devices, and intense programming competition. As a recent report, *The State of the News Media*, noted, "Some argue that as Americans move online, the notion of news consumers is giving way to something called 'pro-sumers,' in which citizens simultaneously function as consumers, editors, and producers of a new kind of news in which journalistic accounts are but one element."[136] Equally important, however, is the rise of "micro-papers" (such as community weeklies), specialized magazines, and niche newsletters. This trend toward specialization of media is at least partially driven by the falling costs of production for some media. Although major entertainment and news programming costs are rising, publishing smaller newsletters, papers, or magazines is easier than ever before.

---

[135] Steven Pearlstein, "News Media Grope for the Right Formula," *The Washington Post*, February 18, 2005, p. E1.

[136] *The State of the News Media 2004: An Annual Report on American Journalism* (Washington, D.C.: Project for Excellence in Journalism, 2004), p. 4, http://www.stateofthenewsmedia.org/index.asp.

The Internet certainly counts as the most exciting modern development in this regard. The Internet offers a significant departure from the media economics of the past since it allows virtually anyone with a little ingenuity and a small amount of money to setup an electronic soapbox on which they can speak to the world.[137] Of course, not everyone will be listening necessarily. And they especially won't be listening if that website offers little in the way of new or important fare. Recent academic research suggests that a few dozen websites attract the most attention online.[138] Thus, while there are millions of websites online, citizens and consumers tend to flock in large numbers to those that offer them the most value. This is unsurprising in that it only confirms what has been known by many other media providers serving other industry sectors: It takes high-quality content to be successful. There will never be anything resembling perfect equality of results in media so long as citizens have the freedom to choose what they watch or listen to. Regardless of how many channels, stations, newspapers, magazines or websites exist, people will always flock to certain sources of news and entertainment over others.

---

137 [T]he Internet came along and made it possible to take segmentation to a new level, dramatically lowering the cost to customize and distribute news and advertising and making it possible to sever the traditional link between the two." Pearlstein, "News Media Grope for the Right Formula."

138 See Matthew Hindman, Kostas Tsioutsiouliklis, and Judy A. Johnson, "Googlearchy: How a Few Heavily-Linked Sites Dominate Politics on the Web," July 28, 2003, (draft dissertation), http://www.princeton.edu/~mhindman/googlearchy--hindman.pdf. The conclusions found in this study have been powerfully challenged by Jakob Nielsen of the Nielsen Norman Group. See Jakob Nielsen, "Diversity Is Power for Specialized Sites," June 16, 2003, http://useit.com/alertbox/20030616.html.

That raises an interesting question: Could it be that what media critics really fear is not a concentration of corporate ownership but a concentration of consumer tastes? Simply stated, no matter how hard regulators try to regulate, or legislators try to legislate it into being, there is just no way for them to create "perfect" media outcomes in terms of the product mix that the public ultimately chooses.[139] People will flock to the media they desire (potentially in very large numbers) even when policymakers believe citizens should be watching or listening to something that is supposedly more enriching or enlightening. This "concentration of tastes" conundrum is impossible to overcome but it has important implications for the debate over media ownership policy. Media economist Bruce Owen, author of *Television Economics* and *The Internet Challenge to Television*, explains:

> In this world of potential plenty, there might well be quite a lot of "concentration," attributable to consumer demand. That is, the nature of popular culture is that it is popular, which means lots of people pay attention to its components, whatever they may happen to be. Some channels would be quite popular, and people who are good at anticipating (or creating) popular cultural icons would try to keep them so, and be well rewarded for success. Their success, of course, has a feedback effect on itself, because what is successful is often popular. In the end, a relatively few channels, and owners, would have the lion's share of the audience and the revenues.
>
> … If the prediction is correct, it follows that we would experience a degree of media "concentration" even in the absence of anything that might be called a market imperfection or entry barrier. Such media concentration simply would be the result of demand-side forces combined with the likely natural distribution of specialized entrepreneurial skills relevant to any distribution of tastes, rather

[139] "Competition in the provision of broadcast programs does not produce perfect results, but there is no evidence that regulation does so either." Krattenmaker and Powe, p. 286.

than supply-side monopolies or government giveaways of our treasured national resource, the spectrum. Equality of *access* to transmission resources would not produce equality of *result* in audience size and revenue, just as competition among book publishers produces a few best sellers and thousands of failures.[140]

[140] "Confusing Success with Access: "Correctly" Measuring Concentration of Ownership and Control in Mass Media and Online Services." by Bruce M. Owen, PFF *Progress on Point* 12.11, July 2005, p. 7, http://www.pff.org/issues-pubs/pops/pop12.11owen.pdf

V) CONCLUSION

In conclusion, as the FCC noted when publishing its new media ownership rules in 2003: "In short, there are far more types of media available today, far more outlets per-type of media today, and far more news and public interest programming options available to the public today than ever before."[141] Indeed, to the extent there was ever a "Golden Age" of American media, we are living in it. There has never been a time in our nation's history when the citizens had access to more media outlets, more news and information, or more entertainment. Abundance, not scarcity, is the defining fact of our current media age.[142] These statements are supported by a solid factual record, whereas the media critics continue to base their case for government control on emotional appeals and unfounded "Chicken Little" scenarios. For far too long, media critics have gotten away with making broad, unfounded generalizations about America's media marketplace. Facts, not fear-mongering, should govern the debate over media policy.

In such an age of abundance and hyper-choice, the question of who owns what or how much they own is utterly irrelevant. No matter how large any given media outlet is today, it is ultimately just one of thousands of

---

[141] FCC, *Media Ownership Proceeding*, p. 49.

[142] "Twenty-first-century consumers have dramatically increased options for getting the personal and community information they want and need to get them through their day and week." Jon Ziomek, "Journalism Transparency and the Public Trust," Aspen Institute *Report of the Eighth Annual Aspen Institute Conference on Journalism and Society*, 2005, p. 28.

sources of news, information and entertainment that we have at our collective disposal. "Indeed, the question confronting media companies today is not whether they will be able to dominate the distribution of news and information in any market, but whether they will be able to be heard at all among the cacophony of voices vying for the attention of Americans," concluded the FCC when releasing its revised media ownership rules.[143]

In such an environment, it is fundamentally unfair to impose asymmetrical regulations and ownership controls on one class of information providers while leaving others completely free to arrange their affairs—and, by extension, their speech—as they wish. Ten years ago, Nicholas Negroponte put it eloquently in his splendid paean to the digital age, *Being Digital*:

> Should it really be unlawful to own a newspaper bit and a television bit in the same place? What if the newspaper bit is an elaboration of the TV bit in a complex, personalized multimedia information system? The consumer stands to benefit from having the bits commingle and the reporting be at various levels of depth and display quality. If current cross-ownership rules remain in existence, isn't the American citizen being deprived of the richest possible information environment? We are shortchanging ourselves grotesquely if we forbid certain bits to commingle with others.[144]

"Bits are bits," argued Negroponte, but in today's heavily regulated media marketplace, sadly, some bits are more free than others.[145] Some media critics might welcome the sort of industrial policy that handcuffs

[143] FCC, *Media Ownership Proceeding*, p. 149.
[144] Negroponte, p. 57.
[145] Ibid., p. 9.

analog age providers while protecting digital-age upstarts from onerous government mandates. But such a system is not only unfair, it is increasingly unworkable. The world of technological and media convergence, which visionaries like Negroponte and George Gilder predicted long ago, is now upon us. With each passing day, the old industry definitions make less and less sense as everyone attempts to compete in everyone else's backyard. Newspapers are less about paper than ever before; it's the digital world they care about now. The same goes for the old analog broadcasting giants. They are migrating services and assets to the digital space as quickly as they possibly can. Cable and satellite companies are already there, of course.

In other words, everyone is finally realizing that bits are bits are bits, and they are changing their business models accordingly. But if we allow the old analog media ownership controls to live on, at some point they will start to spill over into the digital realm and impact those bits too. If we as a society care about freedom, and freedom of information in particular, we must end all media ownership controls before technological and market convergence create regulatory convergence as well.